Sharia Banking in Philippines

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C O N T E N T S

ANNEXES

Islamic invocation

الحمدَ للهِ,

إن الحمدَ للهِ, نحمده و نستعينه و نستغفره و نعوذ بالله من شرور أنفسنا و سيّئات أعمالنا. من يهده الله فلاّ مضل له و من يضلل فلا هادي له.

و أشهد أن لا إله إلا ألله و حده لا شريك له, و أشهد أن محمّدا عبده و رسوله, بلّغ الرساله و أدّى ألأمانه و نصح ألأمه فَتَركها على المحجَّة البيضاء ليلها كنهارها لا يزيغ عنها إلا هالك. اللهم صلّي و سلم و بارك على سيّدنا محمّد و على آله

Preface

I would like to preface this book with a citation from The First Amendment to the U.S. Constitution by Thomas C. Baxter, Jr. Executive Vice President and General Counsel of the Federal Reserve Bank of New York.

In his "Remarks Before the Seminar on Legal Issues in the Islamic Financial Services Industry, entitled: Regulation of Islamic Financial Services in the United States", Baxter had this to say:

> **"... The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof [imdertscoring mine] … In the two centuries since its ratification, our courts have expounded on the meaning of this amendment, which Thomas Jefferson once described as having erected "a wall of separation between church and state."[1] While extending its reach to cover conduct by the states as well as the federal government, the courts have recognized that this separation is not absolute. Indeed, as Chief Justice Warren Burger observed some 20 years ago, the Constitution "affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any [emphasis mine]."[2] In other words, a corollary of the principle of religious freedom enshrined in our Constitution is that the secular law should adapt, as much as possible, to accommodate differing religious practices. Today, I am honored to be able to share my thoughts about how this has been done—or can be done—in the context of the regulation of Islamic financial services in the United States.**
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> **Baxter also cited Mike McMillan who noted that, "in many cases existing U.S. law is broad enough to encompass *shari'a*-compliant structures". He added "Practitioners create products that simultaneously satisfy the demands of secular and religious law, in much the same way as they must look to the law of two or more jurisdictions in structuring a cross-border transaction. This is possible because, in general, the secular law in the United States is silent with respect to matters of religion and because the common law tradition is one of flexibility and adaptation".**

The statements of Thomas C. Baxter before the Seminar on Legal Issues in the Islamic Financial Services Industry (March 2, 2005) a conference of bankers, provide answers to the present question on how Islamic banking, otherwise known as Shariah Finance came to be admitted to the financial system of the United States. The big question was actually posed by a group of anti Shariah finance during the 2008 global financial meltdown.

The anti Sharia Finance is not a product of 9/11. It recently developed in the face of the global financial crisis. two groups actually formed while the world was in search for solutions to the systemic failure of the global financial system: on one side is composed of proponents of Islamic banking. The other side is composed of anti Islamic banking.

Foreword

Today, Shariah finance faces not only challenges but also critics and oppositionists.

Shariah finance faces the challenge that is pushing itself to assume the perceived failure of capitalism. There is no denying anymore as it is being exposed over the multimedia in this age of information technology.

Just who is pushing for this alternative? The Vatican offers the Islamic finance system to western banks as a solution to worldwide economic crisis. Yes. In order to capture the opportunities presented by this changing environment, we need to review this development and refresh on Shariah financing so we can act and respond positively with global reach. The changes that we face today are so pervasive in the way they are taking place. A force of extraordinary advances and on the face of financial systemic failures deserves our attention. It is for this reason that we in the Islamic Banking Research Institute decided to review and refresh the continued prospects of Shariah banking not only in the Philippines but also worldwide. Because it is about Shariah compliance, we deemed it as a Dawah duty. That is the Islamic call to defend Shariah.

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Legal Notices

Disclaimer

Although the author has used reasonable efforts to ensure accuracy of its contents, he assumes no liability for any inadvertent error or omission that may appear in this publication. The information in this publication is the latest available at the date of its production, and may change from time to time.

Translations

The official documentation is published in English only. Even where the author has exceptionally permitted the translation of the documentation, only the English version is valid.

Relation with the Islamic Bank

The Islamic Banking Research Institute, Incorporated (IBRI) was officially registered with the Philippines' Securities and Exchange Commission in 1991. Since 1992, it has been the official Consultant/Advisor of the Al Amanah Islamic Investment Bank of the Philippines (Private) on all matters of Management Information System. It is also a stockholder of the Islamic Bank.

The author, Mr. Abdel Aziz Dimapunong, was the founding chairman and chief executive officer of the original Al Amanah Islamic Investment Bank of the Philippines from 1992 to 1998. He is also a major stockholder of the bank. There were legal controversies on this matter but all of them had been resolved in the Philippine's court of law. All of the results were in favor of the Dimapunong group. Details of these controversies are also contained in this booklet. All related legal documents may be supplied by the author and or IBRI upon request and fees for due diligence. These include a Decision of the Hon. Court of Appeals, Resolutions of the Hon. Supreme Court, Resolutions of the Department of Justice, Manifestation of the Office of the Solicitor General, and documents issued by the Securities and Commission, all in the Philippines. Some of the documents were authenticated by no less than the Office of the President of the Philippines and the Department of Foreign Affairs

Legal References

All legal references mentioned in this booklet and involving the Islamic Bank may be supplied upon arrangement and payment of reasonable due diligence charges with the Islamic Banking Research Institute, Inc.

Logos and Trademarks

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Chapter 1- Islamic banking in the Philippines

In the Philippines, we are comfortable to say that we are among the founders of Islamic banking. The late Senator Mamintal A. Tamano started to conceptualize a Muslim bank in the Philippines as early as 1971. That was the time Islamic banking was in its infancy stage. Although some scholars claimed that Islamic banking started in the late 1950s, others insisted that it actually goes back to the sixties. But it is quite popular to claim that it was only in 1972 that stable Islamic banks were established in Egypt. They were the Nasser Social Bank of Egypt and the Faisal Islamic Bank of Egypt.

As a legislator, Senator Mamintal Tamano intended to sponsor a bill for the passage of a charter of what he initially called as the Philippine Muslim Bank (PMB). I was then a working student, and I was a registered employee of the Senate under the Office of Senator Tamano, then chairman of the Senate Committee on Banks and Currencies. And I was privileged to have typewritten Tamano's drafted bill for the charter of PMB. This draft did not materialize into a law because just as soon as the proposed charter was drafted, Pres. Ferdinand Marcos declared martial law in the Philippines. The entire Congress (includes the Senate) of the Philippines was abolished

In later part of 1972, Senator (this time already ex-Senator) Tamano made some revisions to the proposed charter. The name was changed from Philippine Muslim Bank to Philippine Amanah Bank. The draft format was changed into a presidential decree format without a trace to Tamano. The Senator asked me to deliver the draft to a member of the Marcos Cabinet who was among his close friends. I delivered the final draft to Tamano's friend in the Palace. The following year it became the Presidential Decree No. 264, otherwise known as the Charter of the Philippine Amanah Bank.

The early seventies was the age of the oil phenomenon. Enthusiasm on Islamic banking shifted from Egypt to Saudi Arabia. The pioneering Islamic banker was HRH Prince Mohammed al Faisal Al Saud. To his credit, the Islamic Development Bank of Jeddah, Saudi Arabia was established. He was also the founder of the Faisal chain of Islamic banks and financial institutions. Among these were: the Faisal Islamic Bank of Egypt, Faisal Islamic Bank of Sudan, Faisal Islamic Bank of Kuris, Masraf Faisal Al Islami Bahrain, Masraf Faisal Al Islami Niger, Masraf Faisal de Guinee, Fasraf Faisal de Senegal, Islamic Finance House, Faisal Finance Institution (Istanbul), and the Dar Al Maal Al Islami in the Bahamas. Another Islamic banker from Saudi Arabia was Sheikh Saleh Abdullah Kamil, a prominent businessman, and founder of the Al Baraka Group of companies. He was very closely related to Prince Faisal Al Saud. Sheikh Kamil was also a founder of a chain of Islamic financial institution. Among them were: the Al Baraka Al Sudani, Al Baraka Bank Bahrain, Al Baraka Turkish Finance House in Istanbul, Al Baraka Islamic Bank Mauritania, Al Baraka Investment Company in London, Al Baraka Finance House in London, Al Baraka International in London, and Al Baraka Banking Corporation in Houston, Texas.

The first Islamic bank in the Middle East, which was chartered in the United Arab Emirates, followed our Philippine Amanah Bank in 1975. That was the Dubai Islamic Bank.

In the 1970s, there was no clear legal definition of what Islamic banking means. At least, this was the case in the Philippines. Sharia' counsels were not popular then. In the Philippines, Islamic banking was not even mentioned in the General Banking Law or the Central Bank Act. There was no reference to Islamic banking. There were no rules and no regulation specific for Islamic banking. People simply thought that by being called Amanah bank, Al Amanah Bank, or any Arabic named bank with Moslem officers and holding branches in predominantly Muslim areas, such a bank could already be branded as an Islamic Bank.

In the 1980s, the Ulama counsels (i.e., the Islamic scholars) were already complaining about misleading the general public, making them believe that the Amanah Bank was Islamic Bank. They insisted that charging interest is volatile of Islamic tenets. So, in 1986 the Majlis Da'wah Philippine Al Islami was formally organized by then Mohammad Mauyag Tamano, then Philippine Ambassador to Saudi Arabia. One of the objectives of this organization was to clamor for the establishment of a truly Islamic Bank in the Philippines. That means banking sans interest rates. This organized move was partly inspired by Malaysia's successful passage in 1983 of its Islamic Bank Act 1983, and by the eventual establishment of the Bank Islamic Malaysia Bhd on July of that year. This bank was designed to cater for the banking of Malaysia's predominantly Muslim population who perceive the western banking to be inappropriate for their needs as Muslims

By 1987, there were already thirty-three Islamic banks in the Islamic countries and nine others in the western world. In 1988, the charter of the Al Amanah Islamic Investment Bank of the Philippines was also drafted. By this time, the Philippine Amanah Bank was already perceived to be a total failure. Actually, it was already bankrupt.

To abolish and replace the PAB with a Sharia' compliant bank, a special law, Republic Act No. 6848 was enacted in 1989. In the formulation of this law, the international Muslim bankers were consulted. Dr. Abdullah Omar Nasseef, then Secretary General of the World Muslim League, was among those consulted. Prominent Muslim bankers like Shiek Hassan Kamel and the Al Baraka Group had also been asked for advice.

The enactment of RA 6848, the charter of the Al Amanah Islamic Investment Bank of the Philippines was a very important development in the area of international banking. In the years to follow, the Islamic Bank charter was believed to be a model legal framework for Islamic banking and finance that could be adopted by other countries. This charter is applicable to any country whether it belongs to the World of Muslims or to the Western World.

Today, the principles of Islamic banking reverberate not only in the global banking industry but also in many sectors of the business world and some academies of higher learning. The ethical standards of review that are now being introduced by the so called Sharia' advisory counsels, such as the one provided in the Islamic Bank charter, is now being adopted by western business entities.

The Sharia' advisory boards not only consider the conventional project viability and feasibility – but they also look beyond the traditional way. This is the "Sharia'" standard which could include appropriateness, fairness, trust, transparency, the ethical nature of transactions, as well as social responsibility, especially to the poor, the wayfarer, those afflicted with illness, victims of calamities such as the "Tsunami", and all those in need.

That is why the charter provides for “zakat” or tithe. It also provides for “Qard Al Hassan” which means benevolent loans. Every God-fearing believer for the benefit of the poor and the needy pays a “zakat”. A benevolent loan (Qard al Hassan) does not bear interest and repayment may not be expected. It is provided as a loan in much the same manner as a developed country providing development assistance to an underdeveloped country. The government of the United States of America through the USAID is practicing it. The government of Japan through JICA is also doing it. In the Philippines, it is being done by the government of Australia through its Direct Aid Program (DAP). These foreign nations are providing benevolent loans and financial assistance in the form of “Qard al Hassan”.

All business dealings with Islamic banking, finance, trade, commerce, and, in fact all about Islamic economics, can be found in a common reference of all Muslims of the World today and tomorrow. This is the standard under Sharia’. It is common to all Muslims around the World. It is a standard that will never change for all time. That is a fact about Sharia. Its foundation, the Holy Qur’an will never change. The Hadith likewise will never change. Any deviation from the standard that was set by the Holy Qur’an and the Hadith is called “bida’a” and it will be rejected by any real Sharia’ counsel. Said “Bida’a“or deviation from standard will be returned to innovators. There is no compromise. For instance, interest charges maybe disguised as bank charges. This kind of deviation will not be honored by any real Sharia’ counsel. Islamic banking under the principles of Sharia’ represents a standard way of economic life. Muslims and non-Muslims alike will learn from these moral standards in all business deals. .

In its mandate to formulate the rules and regulations for the Islamic Bank, the Monetary Board in the Philippines was required by law under Section 48 of RA 6848 to observe “the universal principle of the Islamic Sharia’”.

Paramount of this significant development in international banking is the fact that the Muslim way of doing business is gaining understanding and acceptance in the world of business. This could be the start of international harmony among nations.

The Federal Bank of USA acknowledges Islamic finance as an important development in international banking. That is according to William L. Rutledge, Exec. V P of the Federal Reserve Bank of New York, in his “Remarks at the 2005 Arab Bankers Association of North America (ABANA) Conference on Islamic Finance: Players, Products & Innovations in New York City... He further said that as US regulators, they “are open to Islamic financial products” within the U.S. structure.

The charter of the Islamic Bank provides for a Sharia’ Advisory Counsel to preview transactions of the bank in accordance with the Sharia’ standards. The law also provides that the Board of Directors shall sit as a Board of Arbitration to settle intra-corporate disputes among shareholders and investors. To implement this mandate, the Board of Directors was authorized by this law to set the rules and procedure that it shall follow in the arbitration while the Monetary Board was mandated to formulate the rules and regulation

The bank was formally organized on April 28, 1992. Soon after, the Rules of Practice and Procedure before the Board of Arbitration was adopted and promulgated by the Board of Directors. Even if it was rather late, the Monetary Board also issued the Implementing Rules and Regulation (IRR) for the Islamic Bank under BSP Circular 105.

When the Monetary Board formulated the old IRR for the Islamic Banking in 1996 under the 1996 central bank circular no. 105-96, it includes all sorts of rules and regulations applicable to all banks in general including the receipt and payment of interests (riba), which is what the charter prohibits, made illegal and punishable. The rules and regulations applicable to the conventional banks under the old General Banking Act, RA 337 was also made part of the IRR for the Islamic Bank. Consequently, the Islamic Bank regular lobbyists, namely: the Filipino Muslim Chamber of Agriculture and Fisheries, Inc., (a major stockholder of the Islamic Bank) and the National Alliance of Muslim NGOs of the Philippines lobbied in Congress relentlessly to remove, revise, or reconstruct the general banking law.

Consequently, Congress not only revised the old GBA, RA 337, but also replaced it with the New General Banking Law (GBL 2000), RA 8791. Under this new law, some of the powers of the old Monetary Board were clipped, most of them transferred to the Department of Finance, and some of them to the Securities and Exchange Commission (SEC). And yet some of them were eliminated. Other banking laws, placing the Monetary Board as "still supervising" but along with other authorities, now govern some other banks.

After the year 2000,there were many banking laws enacted in the Philippines. The provisions of the Thrift Banks Act, the Rural Banks Act, and the Cooperative Code now govern thrift banks, rural banks and cooperative banks. Cooperative banks are not only monitored but also supervised by the Cooperative Development Authority. Section 94 of 8791 also provides the "phase out of Bangko Sentral Powers over building and loan associations. All the relevant supervisory and regulatory powers of the Monetary Board under that Section were transferred to the Home Insurance and Guarantee Corporation.

As for the Islamic Bank, it is now governed by special laws as provided in Section 71, RA 8791 - rather than the general banking law. This governance covers the "organization" of the Islamic Bank, "its ownership and capital requirements, powers, supervision and general conduct of business".

As an update to IRR under BSP Circular 106 and in pursuance to the provisions of the new GBL 2000, the Monetary Board, in its Resolution No. 2154 dated December 15, 2000, approved Circular No. 271, Series of 2001, otherwise known as the regulations implementing Section 3 and other related sections of R.A. No. 8791. Under this new rules and regulations (NRR), the Islamic Bank is classified as one kind of its own, with its own sets of rules and regulations as distinguished from the other banks.

Chapter 2- The founders of Islamic banking

For the records, the Islamic Banking Research Institute has documented the historical background of pioneering Islamic banks as well as their founders. These are the Islamic banks and Islamic financial institutions that were founded in the 1970s. In the world of Islamic banking, their founders are well known. There are only two types: individuals and governments. The individuals are composed mainly of three personalities, the â€œBankers Par Excellenceâ€ö, namely: His Highness, Prince Muhammad Faisal Al Saud of the Faisal chain of Islamic banks, His Excellency, Saleh Abdullah Kamel of the Al Baraka group of banks, and His Excellency, Ahmad Muhammad Ali, president of the Islamic Development Bank. The multi-lateral organization that is otherwise known as the Organization of Islamic Conference was the founder of the Islamic Development Bank whose president from the start has been Dr. Ahmad Mohammad Ali.

Muhammad Faisal Al Saud.

Prince Muhammad Faisal Al Saud and Saleh Abdullah Kamel were actually co-founders of several pioneering Islamic banks including the Faisal Islamic Bank of Egypt and the Faisal Islamic Bank of Sudan. They started establishing Islamic banks in the early 1970s. The Faisal Islamic Bank survived until today with impressive performance in Egypt. This bank is now servicing more than five hundred thousand accounts with its total assets amounting to over 2 billion U.S dollars. Its updated capital is now US$ 500 million of which US$132 million has been fully paid up. The establishment of the Faisal Islamic Bank of Egypt in the 1970s opened the door to Islamic banking. Today, banks are competing in Egypt for Sharia compliant products. This includes the Egyptian Gulf Bank, Commercial International Bank of Egypt, Commercial International Life Insurance Company, El Watany Bank of Egypt, the National Societe Generale Bank, Egyptian American Bank, MISR International Bank, Housing & Development Bank, Delta International Bank, Piraeus Bank Egypt SAE, and Calyon Bank Egypt.

Muhammad Faisal is also the founder of Dar Al Mal Al Islami. Faisal is also carried by such banks as the Masraf Faisal de Senegal, Masraf Faisal Al Islami Bahrain, Masraf Faisal Al Islami Niger, Masraf Faisal de Guinea, and the Faisal Finance Institution Istanbul. The name is also associated with the Islamic Bank in Austria, the Kibris Islamic Bank in Cyprus, and other banks and financial institutions Niger, Senegal, and the Bahamas.

Saleh Abdullah Kamel.

Another founder of Islamic banking is Saleh Abdullah Kamel. He has been involved in pioneering Islamic banking together with Muhammad Faisal Al Saud. On his own, he has been involved in investment houses, trading and other business concerns not only in Egypt and Sudan but in Greece, USA, the Bahamas and other countries. He was founding chairman of the Jordanian Islam Bank for Finance and Investments, Arab Investment Company of Egypt, Arab Union Investment Company of Egypt. Saleh Abdullah Kamel has

also been chairman of The Islamic Arab Insurance Company.

In the 1990s, Sheikh Kamel was still as active as the beginning of Islamic banking in the 1970s. He was founding chairman of the Al Tawfeek Company for Investment Funds Ltd. Incorporated in 1992; this company aims to provide medium and long term finance for new companies, investment and infrastructure development projects. Al Tawfeek Company for Investments participates in international equity portfolios. It is in the business of financial syndication by acting as agent as well as underwriter. It has an authorized capital US $500 million of which US $304 million has already been paid up. It has a record of having issued fund capital amounting to over US$ 1.5 Billion.

Throughout the Muslim world, the Al Baraka Group of Saleh Abdullah Kamel provides banking, investment, insurance, and lending services to businesses and industry. Al Baraka Investment and Development has been an influential investor. It has a record of having managed assets exceeding $4.4 billion. All of these are to the credit of one of the founders of Islamic banking, Saleh Abdullah Kamel and his business associates.

The Al Baraka Group is the holding company for many businesses involved in trading operations, heavy industry, real estate, media, and finance in more than 40 countries. As of year end 2004, the Al Baraka group of Saleh Kamel employs 38,250. He is still the chairman and president, undeniably one of the founders of Islamic banking and finance.

The Organization of Islamic Conference.

The Organization of Islamic Conference is also among the founders of international Islamic banking. The Islamic Conference is an inter-governmental organization grouping of Muslim countries. Its members now are fifty-seven States. These member-states pool their financial resources in order to establish a financial institution where they can act together for the development of their countries and their peoples.

The Organization of Islamic Countries was established in Rabat, Kingdom of Morocco on 25 September 1969. This was the First meeting of the leaders of Muslim countries who gathered together in the name of Islam. There were other historical meetings of Muslim leaders but they were mainly political in nature. The Rabat meeting was called for by Muslim leaders in the wake of a major historical event involving an attack on August 21, 1969 of the Masjid Al Aqsa in occupied Jerusalem. The meeting was convened in order to defend the honor and dignity of the world of Islam. It was triggered by a challenge not on political consideration but purely Islamic which was the common sentiment of the founding members of the Islamic Conference. The city of Al-Quds is holy to all the Muslims considering that it is the site of the Holy Masjid Al Aqsa. This Masjid appears in the Holy Quran. It was the first direction of Islamic prayer from the time of Prophet Ibrahim, peace is on him, until it was changed to Masjid Al Haram in Mecca during the time of Prophet Muhammad, peace is on him.

Even today, Masjid Al Aqsa is the third holiest Shrine of Islam. The Muslim leaders met in

Rabat to act together for their common cause and aspirations. It was a meeting to consolidate their combined forces and lay the foundations of their unity that eventually came to be known as the Organization of the Islamic Conference. The Organization started with two main components, namely: the Conference of Kings and Heads of State and Government and the Conference of Ministers of Foreign Affairs. Then the General Secretariat was organized on March 1970 during the First Islamic Conference of Ministers of Foreign Affairs that was held in Jeddah, Saudi Arabia. This conference set up a permanent General Secretariat to ensure a liaison among Member States of the organization. The Conference appointed its Secretary General and chose Jeddah as the Headquarters of the Organization. On February 1972, the Islamic Conference of Foreign Ministers, meeting in its Third Session, adopted the Charter of the Organization. Its avowed purpose under its charter is to strengthen solidarity and cooperation among Islamic States in the political, economic, cultural, scientific and social fields. The Islamic Development Bank. The Organization of Islamic Conference has created committees mostly on ministerial level. Some of these are chaired by Heads of State. The Conference of Finance Ministers was also created.

On December 18, 1973, the Conference of Finance Ministers was held in Jeddah, Saudi Arabia where it issued a Declaration of Intent in pursuance of which the Islamic Development Bank was established. Having been established, the inaugural meeting of the Board of Governors took place on July 1975. The following countries put up the paid-up capital of the bank: Saudi Arabia, Kuwait, Libya, Turkey, UAE, Iran, and Egypt. The purpose of the Islamic Development Bank is to foster the economic development and social progress of member countries and Muslim communities in non-member countries individually as well as jointly in accordance with the principles of Sharia. It certainly is one of the pioneering Islamic banks having been opened for operations on October 20, 1975. Islamic Development Bank operates on Islamic principles. The Bank has financed 387 operations totaling $3.9 billion in 39 member states, and made a profit of $26 million in 1982-83. Since then, IDB has been making steady progress. Up to the end of June 1992, the authorized capital of the Islamic Development Bank was two billion Islamic Dinars. From this figure, the authorized capital was increased to six billion Islamic Dinars. Its subscribed capital also became four billion Islamic Dinars. Eventually, this was raised to15 billion Islamic Dinars and the subscribed capital also increased to 8.1 billion Islamic Dinars.

The Islamic Dinar (ID) is the accounting unit of value in the Bank, and is equivalent to one Special Drawing Right (SDR) of the International Monetary Fund.

The principal office of the Islamic Development Bank is a landmark in Jeddah, Kingdom of Saudi Arabia.

In 1994; a regional office in Rabat was opened and one regional office in Kuala Lumpur was inaugurated. In July 1997, the board of Executive Directors established another regional office in Almaty, Kazakhstan. The Bank also has field representatives in Indonesia, Iran, Kazakhstan, Libya, Pakistan, Senegal, Sudan, Gambia, Guinea Bissau, Mauritania and Algeria. Pakistan and Iran are already on full scale Islamic banking and Islamic economics. Somalia has also announced its intent to go full scale Islamic banking.

The official functions of the Islamic Development Bank include participation in equity capital and the granting of loans for productive projects and enterprises. It provides financial assistance to member countries in other forms for economic and social development. The Islamic Development Bank is also authorized to accept deposits sans interest rates and to mobilize financial resources through Sharia compatible schemes. It is also charged with the responsibility of assisting in the promotion of foreign trade, especially in capital goods, among member countries.

The Bank is also required to establish and operate special funds for specific purposes including a fund for assistance to Muslim communities in non-member countries.

Dr. Ahmad Muhammad Ali.

At the helm of the Islamic Development Bank has been Dr. Ahmad Muhammad Ali, a Saudi Arabian who was born in 1934 in Madina, Saudi Arabia, the city of prophet Muhammad, peace is on him. Dr. Ali obtained his B.A. Commerce degree at the Cairo University in Egypt in 1957. He earned his M.A. at the University of Michigan in USA; and he also earned his degree in Public Administration in the United States in 1962. Thereafter, he earned his Ph.D. degree in Albany in USA in 1967 Dr. Ali started his first stint as President of the Islamic Development Bank on January 1, 1975 up to January 1, 1993. Thereafter, he was appointed as Secretary General of the Muslim World League from January 1, 1993 to January 1, 1995. Dr. Ali made his second stint as President again of the Islamic Development Bank from January 1, 1995 up until the present.

Last October 2006, I wrote a blog about the founders of Islamic banking based on documented records compiled by the Islamic Banking Research Institute. The research covers historical background of pioneering Islamic banks as well as their founders. These are existing and operational Islamic banks and Islamic financial institutions that were founded in the early 1970s. In the world of Islamic banking, their founders are well known. The Institute as composing of only two types listed them: individuals and governments. The individuals are composed mainly of three personalities, the "Bankers Par Excellence", namely: His Highness, Prince Muhammad Faisal Al Saud of the Faisal chain of Islamic banks, His Excellency, Saleh Abdullah Kamel of the Al Baraka group of banks, and His Excellency, Ahmad Muhammad Ali, president of the Islamic Development Bank. The multi-lateral organization that is otherwise known as the Organization of Islamic Conference was the founder of the Islamic Development Bank whose president from the start has been Dr. Ahmad Mohammad Ali.

It has been suggested by one Grande Dianaton, incumbent chairman and chief executive officer of the Amanah Islamic Bank, that the late Senator Mamintal A. Tamano be considered as among the founders of Islamic banking. This is also the view of Datu Muamar Badio, former chairman of the said bank. Of late, I also received some email messages that echoes the same opinion as that of Dianaton and Badio. The Institute then reviewed its research on the founders of Islamic banking. After some reflections, we consider the late Senator Mamintal A Tamano as among the founders of Islamic banking.

The late Senator started to conceptualize a Muslim bank in the Philippines as early as 1971. That was the time Islamic banking was in its infancy stage. Although some scholars claimed that Islamic banking started in the late 1950s, others insisted that it actually goes back to the sixties. But it is quite popular to claim that it was only in 1972 that stable Islamic banks were established in Egypt. They were the Nasser Social Bank of Egypt and the Faisal Islamic Bank of Egypt.

The concept of a Muslim bank by Senator Mamintal Tamano was later to become the Philippine Amanah Bank that was created by Presidential Decree No. 124. This bank existed from 1973 to 1989. It was the precursor of what is now the Al Amanah Islamic Investment Bank of the Philippines created under Republic Act No. 6848. Senator Tamano played a key role in the establishments of these two banks in the Philippines.

<u>The birth of a Muslim leader</u>

Mamintal Tamano was born in Tamparan, Lanao Del Sur on December 25, 1928. He finished his secondary course at Lanao High School as valedictorian. He graduated Bachelor of Arts in 1952 and Bachelor of Laws in 1953 both at the University of the Philippines, the premier institution of higher learning in the country.

On 31 May 1958 Senator Mamintal Tamano was married to Putri Zorayda Abbas with whom he had nine children. Mamintal Tamano, as a lawyer became Justice of the Peace in the province of Lanao.

Tamano's marriage life did not stop him to pursue higher education in law. In 1958, he was graduated Master of Laws at the Cornell University, U.S.A. When he returns home, he

entered the political arena. He was elected vice-governor for ten years from 1959 to 1968 in the province of Lanao del Sur.

After being a vice governor, Mamintal Tamano was appointed as Commissioner of the Commission on National Integration, a cabinet rank in the Marcos administration. The Commission provides study scholarship to deserving members of the cultural minority groups. They usually belong to the poor but belonging to the upper 15% of the graduating class in high school. Tamano was Commissioner until 1969 when he filed his candidacy for senator. It was this time that I met the then Commissioner Tamano, only months before he became a senator. I served as volunteer to his campaign headquarters at Syquia Apartments until the election was over. Fortunately, he was elected senator. I was among the employees of his office until the Senate was abolished and President Ferdinand Marcos declared Martial Law.

In the Philippines where the Muslims were in the minority, it was a rarity for a Muslim to be elected senator. The Philippine Congress has a limited record on Muslim representation in its chamber. Under the American regime, the Senate first elected in 1941 a Muslim sultan by the name of Alauya Alonto. When sovereignty was handed back to the Philippines in 1946, two senators were elected in the First Congress, namely: Alonto and Salipada Pendatun. The Second Congress had no Muslim senator. In 1955 Domocao Alonto, son of Sultan Alauya Alonto, was elected to the Senate to serve in the Third and Fourth Congress. Again, there was no Muslim senator in the Fifth and Sixth. It was on the Seventh Congress that Mamintal Tamano was elected during the 1969 election. In the Eighth Congress two Muslims were elected after the end of Martial Law. They were Mamintal Tamano and Santanina Rasul.

Conceptualizing the Philippine Amanah Bank

As a legislator during his first term, Senator Mamintal Tamano intended to sponsor a bill for the passage of a charter of what he initially called as the Philippine Muslim Bank (PMB). I was then a working student, and I was a registered employee of the Senate under the Office of Senator Tamano, then chairman of the Senate Committee on Banks and Currencies. And I was privileged to have typewritten Tamano's drafted bill for the charter of PMB. This draft did not materialize into a law because just as soon as the proposed charter was drafted, Pres. Ferdinand Marcos declared martial law in the Philippines. The entire Congress (includes the Senate) of the Philippines was abolished.

In later part of 1972, Senator (this time already ex-Senator) Tamano made some revisions to the proposed charter. The name was changed from Philippine Muslim Bank to Philippine Amanah Bank. The draft format was changed into a presidential decree format without a trace to Tamano. The Senator asked me to deliver the draft to a member of the Marcos cabinet who was among his close friends. I delivered the final draft to Tamano's friend in the Palace. The following year it became the Presidential Decree No. 264, otherwise known as the Charter of the Philippine Amanah Bank.

The early seventies was the age of the oil phenomenon. Enthusiasm on Islamic banking shifted from Egypt to Saudi Arabia. The pioneering Islamic banker was HRH Prince Mohammed al Faisal Al Saud. To his credit, the Islamic Development Bank of Jeddah, Saudi Arabia was established. He was also the founder of the Faisal chain of Islamic banks and financial institutions. Among these were: the Faisal Islamic Bank of Egypt, Faisal

Islamic Bank of Sudan, Faisal Islamic Bank of Kibris, Masraf Faisal Al Islami Bahrain, Masraf Faisal Al Islami Niger, Masraf Faisal de Guinea, Masraf Faisal de Senegal, Islamic Finance House, Faisal Finance Institution (Istanbul), and the Dar Al Maal Al Islami in the Bahamas. Another Islamic banker from Saudi Arabia was Sheikh Saleh Abdullah Kamel, a prominent businessman, and founder of the Al Baraka Group of companies. He was very closely related to Prince Faisal Al Saud. Sheikh Kamel was also a founder of a chain of Islamic financial institution. Among them were: the Al Baraka Al Sudani, Al Baraka Bank Bahrain, Al Baraka Turkish Finance House in Istanbul, Al Baraka Islamic Bank Mauritania, Al Baraka Investment Company in London, Al Baraka Finance House in London, Al Baraka International in London, and Al Baraka Banking Corporation in Houston, Texas.

The first Islamic bank in the Middle East, which was chartered in the United Arab Emirates, followed our Philippine Amanah Bank in 1975. That was the Dubai Islamic Bank.

In the 1970s, there was no clear legal definition of what Islamic banking means. At least, this was the case in the Philippines. Sharia' counsels were not popular then. In the Philippines, Islamic banking was not even mentioned in the General Banking Law or the Central Bank Act. There was no reference to Islamic banking. There were no rules and no regulation specific for Islamic banking. People simply thought that by being called Amanah bank, Al Amanah Bank, or any Arabic named bank with Moslem officers and holding branches in predominantly Muslim areas, such a bank could already be branded as an Islamic Bank.

In the 1980s, the Ulama counsels (i.e., the Islamic scholars) were already complaining about misleading the general public, making them believe that the Amanah Bank was Islamic Bank. They insisted that charging interest is violative of Islamic tenets. So, in 1986 the Majlis Da'wah Philippine Al Islami was formally organized by then Mohammad Mauyag Tamano, then Philippine Ambassador to Saudi Arabia. One of the objectives of this organization was to clamor for the establishment of a truly Islamic Bank in the Philippines. That means banking sans interest rates. This organized move was partly inspired by Malaysia's successful passage in 1983 of its Islamic Bank Act 1983, and by the eventual establishment of the Bank Islamic Malaysia Bhd on July of that year. This bank was designed to cater for the banking of Malaysia's predominantly Muslim population who perceive the western banking to be inappropriate for their needs as Muslims.

<u>The return of Tamano to the Senate and the creation of Amanah Islamic Bank</u>

Upon the end of Martial Law in March 1980, the Kilusang Bagong Lipunan (KBL) had become the ruling party in the Philippines. During that time, other parties were being formed. Senator Gil Puyat resumed the Presidency of the Nacionalista Party upon the strong representation of high officials of the Party including Vice-President Fernando Lopez, and Speaker Jose B. Laurel Jr.; President Gil Puyat issued Executive Order No.1, Series of 1980 which authorized him to create an Ad Hoc Committee. The revitalization and strengthening of the Nacionalista Party was the purpose of the Ad Hoc Committee. But this suffered a setback when Gil Puyat passed away on March 22, 1981 of a heart attack. The task of revitalizing the party was then pursued by the Ad Hoc Committee of which Mamintal Tamano was a member.

With his return to politics, Tamano became a member of President Corazon C. Aquino's cabinet as Deputy Minister of Foreign Relations in 1986.

On May 11, 1987, elections were held for 200 members of the House of Representatives and 24 Senators. Elected as senators were 22 candidates of the Aquino coalition Lakas ng Bayan, namely: Jovito Salonga, Liberal Party; Agapito Aquino, Lakas ng Bayan; Orlando Mercado, Unido; John Osmena, Unido-Lakas; Edgardo Angara, Independent; Alberto Romulo, Lakas; Leticia Shahani, Lakas; Neptali Gonzales, Lakas; Rene Saguisag, Independent; Joey Lina, PDP-Laban; Wigberto Tanada, Nationalist bloc; Sotero Laurel, Unido; Heherson Alvarez, Lakas; Raul Manglapus, NUCD; Teofisto Guingona, Bandila; Vicente Paterno, Independent; Vitor Ziga, Independent; Ernesto Maceda, Unido; and Aquilino Pimentel, PDP-Laban; Ernesto Herrera, Laban; Mamintal Tamano, Laban; Santanina Rasul, independent. Only two opposition candidates make it to the Senate: Joseph Estrada and Juan Ponce Enrile, both from the opposition coalition Grand Alliance for Democracy.

Mamintal Tamano's term as elected Senator of the Philippines was for the period 1987 to 1992. As a Senator, he worked for the autonomy for the Muslims and the rest of Mindanao and on Mindanao's natural resources. Tamano also worked for the creation of a new Islamic Bank.

By 1987, there were already thirty-three Islamic banks in the Islamic countries and nine others in the western world.

In 1988, the charter of the Al Amanah Islamic Investment Bank of the Philippines was also drafted. By this time, the Philippine Amanah Bank was already perceived to be a total failure. Actually, it was already bankrupt.

To abolish and replace the PAB with a Sharia' compliant bank, a special law, Republic Act No. 6848 was enacted in 1989. In the formulation of this law, the international Muslim bankers were consulted. Dr. Abdullah Omar Nasseef, then Secretary General of the World Muslim League, was among those consulted. Prominent Muslim bankers like Sheik Hassan Kamel and the Al Baraka Group had also been asked for advice.

On January 26, 1990, President Corazon C. Aquino signed into law R. A. No. 6848, otherwise known as the Charter of the Al Amanah Islamic Investment Bank of the Philippines. On June 25, 1991, I was designated by the office of the President of the Philippines to organize this bank pursuant to the provisions of its charter.

Republic Act No. 6848 repealed Presidential Decree No. 264, the charter of the Philippine Amanah Bank. Hence, this old bank was abolished. The services of its board of directors and all its employees were not terminated outright but they were reclassified by section 49 of the new law, RA 6848, to continue as personnel compliment "in the interim" until the Islamic Bank shall have been properly organized.

After coordinating with concerned government agencies and the private stockholders, the Islamic Bank was officially organized by a general shareholders meeting on April 28, 1992 in accordance with its charter. The chairman and president of the abolished Philippine Amanah Bank were disqualified and therefore not elected nor appointed to any position of the new Islamic Bank.

At the time the Islamic Bank was organized in 1992, the national government was the controlling stockholder and there were very few private stockholders with minimal investments. However, when the provisions of RA 6848 were implemented, the number of private stockholders rose to several hundreds in 1993, and more in 1994. So the equation on ownership was reversed gradually owing to the failure of the government to put up its share (Series "A") of investments. Only the private stockholders were able to put up investments by subscribing to Series "B" and "C' shares. And so from 1994, the private stockholders held the controlling interest.

The enactment of RA 6848, the charter of the Al Amanah Islamic Investment Bank of the Philippines was a very important development in the area of international banking. In the

years to follow, the Islamic Bank charter was believed to be a model legal framework for Islamic banking and finance that could be adopted by other countries. This charter is applicable to any country whether it belongs to the World of Muslims or to the Western World.

Today, the principles of Islamic banking now reverberate not only in the global banking industry but also in many sectors of the business world and some academies of higher learning. The ethical standards of review that are now being introduced by the so called Sharia' advisory counsels, such as the one provided in the Islamic Bank charter, is now being adopted by western business entities.

The Sharia' advisory boards not only consider the conventional project viability and feasibility – but they also look beyond the traditional way. This is the "Sharia'" standard which could include appropriateness, fairness, trust, transparency, the ethical nature of transactions, as well as social responsibility, especially to the poor, the wayfarer, those afflicted with illness, victims of calamities such as the "Tsunami", and all those in need. That is why the charter provides for "zakat" or tithe. It also provides for "Qard Al Hassan" which means benevolent loans. Every God-fearing believer for the benefit of the poor and the needy pays a "zakat". A benevolent loan (qard al Hassan) does not bear interest and repayment may not be expected. It is provided as a loan in much the same manner as a developed country providing development assistance to an underdeveloped country. It is being practiced by the government of the United States of America through the USAID. It is also being done by the government of Japan through JICA. In the Philippines, it is being done by the government of Australia through its Direct Aid Program (DAP). These foreign nations are providing benevolent loans and financial assistance without them knowing that these loans are in the form of "qard al Hassan".

All business dealings with Islamic banking, finance, trade, commerce, and, in fact all about Islamic economics, can be found in a common reference of all Muslims of the World today and tomorrow. This is the standard under Sharia'. It is common to all Muslims around the World. It is a standard that will never change for all time. That is a fact about Sharia. Its foundation, the Holy Qur'an will never change. The Hadith likewise will never change. Any deviation from the standard that was set by the Holy Qur'an and the Hadith is called "bida'a" and it will be rejected by any real Sharia' counsel. Said "Bida'a"or deviation from standard will be returned to innovators. There is no compromise. For instance, interest charges maybe disguised as bank charges. Islamic banking under the principles of Sharia' represents a standard way of economic life. Muslims and non-Muslims alike will learn from these moral standards in all business deals. .

In its mandate to formulate the rules and regulations for the Islamic Bank, the Monetary Board in the Philippines was required by law under Section 48 of RA 6848 to observe "the universal principle of the Islamic Sharia'".

Paramount of this significant development in international banking is the fact that the Muslim way of doing business is gaining understanding and acceptance in the world of business. This could be the start of international harmony among nations.

The charter of the Islamic Bank provides for a Sharia' Advisory Counsel to review transactions of the bank in accordance with the Sharia' standards. The law also provides that the Board of Directors shall sit as a Board of Arbitration to settle intra-corporate

disputes among shareholders and investors. To implement this mandate, the Board of Directors was authorized by this law to set the rules and procedure that it shall follow in the arbitration while the Monetary Board was mandated to formulate the rules and regulation

The bank was formally organized on April 28, 1992. Soon after, the Rules of Practice and Procedure before the Board of Arbitration was adopted and promulgated by the Board of Directors. Even if it was rather late, the Monetary Board also issued the Implementing Rules and Regulation (IRR) for the Islamic Bank under BSP Circular 105.

Exactly ten years after its adoption today, the thickness of the IRR is back to the thinness of what it should have been. Today, with some exceptions the IRR is back to being the image-file of the charter of the Islamic Bank. It should now be known as the New Rules and Regulations (NRR) reflecting the new laws of the Millennium in the Philippines, such as the New Central Bank Act, and the New General Banking Law of 2000. And a new development in international banking and finance.

Chapter 2 -The shadow of Philippine Amanah Bank

This chapter is about the relationship of the Philippine Amanah Bank and the Amanah Islamic Bank, more particularly on their respective shares of stocks.

It is wrong to say that the Amanah Islamic Bank is the former Philippine Amanah Bank. It is wrong to write Amanah Islamic Bank (formerly Philippine Amanah Bank)

This chapter in attempts to explain that the Amanah Islamic Bank is not the former Philippine Amanah Bank. I will support the explanation with legal provisions of law, legal jurisprudence, accounting and auditing data.

The shadow of the abolished Philippine Amanah Bank still lingers because there is still the confusion and wrong presumption that the Amanah Islamic Bank is the former Philippine Amanah Bank. This error is perpetuated by new government officers of the so-called Privatization and Management Office, successor of the Asset Privatization Trust, who are still trying to sell the dead shares of the Philippine Amanah Bank in the name of the new Amanah Islamic Bank. For this reason, there is a need to get back to the charter of the old Philippine Amanah Bank.

When the Monetary Board formulated the IRR for the Islamic Bank in 1996, it includes all sorts of rules and regulations applicable to all banks in general including the receipt and payment of interests (riba), which is what the charter prohibits, made illegal and punishable. The rules and regulations applicable to the conventional banks under the old General Banking Act, RA 337 was also made part of the IRR for the Islamic Bank. Sad to say, the Monetary Board in the Philippines never had a Muslim member. The Monetary Board cannot be blamed for something they are not familiar with. Consequently, the Islamic Bank regular lobbyists, namely: the Filipino Muslim Chamber of Agriculture and Fisheries, Inc., (a major stockholder of the Islamic Bank) and the National Alliance of Muslim NGOs of the Philippines lobbied in Congress relentlessly to remove, revise, or reconstruct the general banking law.

Consequently, Congress not only revised the old GBA, RA 337, but also replaced it with the New General Banking Law (GBL 2000), RA 8791. Under this new law, some of the powers of the old Monetary Board were clipped, most of them transferred to the Department of Finance, and some of them to the Securities and Exchange Commission (SEC). And yet some of them were eliminated. Other banking laws, placing the Monetary Board as "still supervising" but along with other authorities, now govern some other banks.

There are now many banking laws in the Philippines. The provisions of the Thrift Banks Act, the Rural Banks Act, and the Cooperative Code now govern thrift banks, rural banks and cooperative banks. Cooperative banks are not only monitored but also supervised by the Cooperative Development Authority. Section 94 of 8791 also provides the "phase out of Bangko Sentral Powers over building and loan associations. All the relevant supervisory and regulatory powers of the Monetary Board under that Section were transferred to the Home Insurance and Guarantee Corporation.

As for the Islamic Bank, special laws as provided in Section 71, RA 8791 - rather than the general banking law now govern it. This governance covers the "organization" of the Islamic Bank, "its ownership and capital requirements, powers, supervision and general conduct of business".

As an update to IRR under BSP Circular 106 and in pursuance to the provisions of the new GBL 2000, the Monetary Board, in its Resolution No. 2154 dated December 15, 2000, approved Circular No. 271, Series of 2001, otherwise known as the regulations implementing Section 3 and other related sections of R.A. No. 8791. Under this new rules

and regulations (NRR), the Islamic Bank is classified as one kind of its own, with its own sets of rules and regulations as distinguished from the other banks.

It has been a dozen years since the Philippines had no Muslim Senators. The 10th, 11th, 12th and 13th Congresses mark the longest period in Philippine history without a Muslim senator. During this period of time, however, the Muslims enjoyed a regional autonomous government in the Autonomous Region of Muslim Mindanao (ARMM). The Amanah Islamic Bank is doing serving their banking needs. This is a legacy of Senator Mamintal A. Tamano. It is but fitting to formally recognize him as the brain and founder of the Islamic Bank and its predecessor, the Philippine Amanah Bank. Because he started them all in 1971, Mamintal Tamano is certainly among the founders of Islamic banking worldwide.

It was during the oil phenomenon in 1973 that the Martial Law government of Ferdinand Marcos established by decree the Philippine Amanah Bank with all its pretension as a Muslim bank if not strictly an Islamic bank. However, this was only for a show to the Muslim world. The truth was this bank was never a truly Islamic bank.

In August of 1974, Marcos amended PD 264 by issuing PD 542. To the Muslims in the Philippines, it was very pleasing to read the following preamble to the amendment, thus

"WHEREAS, in order to render more effective the foregoing intentions and objectives of this Decree, it is necessary that the religious beliefs and practices of the Muslim citizens of the Philippines, be followed and respected, unless otherwise it is contrary to law, good morals and public policy

Section 1 of the amendment was also very pleasing to read, thus:

The Philippine Amanah Bank shall be based on the Islamic Concept of Banking, following the no-interest and partnership principles."

Despite of the amendment, however, from day one of its operation in 1973 until it was abolished in February 1990; it was paying and charging interest in violation of Islamic banking principle. It was also never owned by Muslims except for nominal few private stockholders

Capitalized at a meager amount of only P50 million (about USD 1.3 million) in 1973, the PAB was finally insolvent at end of year 1993.

There is not a sensible and meaningful financial analysis about the performance of the abolished Philippine Amanah Bank. There was also nothing in it that the Muslims of the Philippines can be proud of. It was a total failure. It was a total disappointment.

To some Muslim scholars in the Philippines, the operation of the defunct PAB from 1974 up to 1992 under the supervision of the government financial institutions (the Philippine National Bank and later the Development Bank of the Philippines) was meant to degrade and embarrass the Muslim professionals

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Republic Act No. 6848 repealed Presidential Decree No. 264, the charter of the Philippine Amanah Bank. Hence, this old bank was abolished. The services of its board of directors and all its employees were not terminated outright but they were reclassified by section 49 of the new law, RA 6848, to continue as personnel compliment "in the interim" until the Islamic Bank shall have been properly organized.

On January 16, 1992, an audience with former President Corazon C Aquino was granted by Malacanang Palace. Then Senator Mamintal A Tamano, then chairman of the Committee on Banks and Currencies attended the meeting with Her Excellency in the Palace, with myself as the sole government representative to the Islamic Bank. The senator and myself briefed Her Excellency on the legal manner of organizing the Al Amanah Islamic Investment Bank of the Philippines, or Islamic Bank, for short. The senator and myself were glad to have the blessing of her Excellency.

After coordinating with concerned government agencies and the private stockholders, the Islamic Bank was officially organized by a general shareholders meeting on April 28, 1992 in accordance with its charter. The chairman and president of the abolished Philippine Amanah Bank were disqualified and therefore not elected nor appointed to any position of the new Islamic Bank. They in turn filed so many baseless and malicious cases, which are also found in this book.

At the time the Islamic Bank was organized in 1992, the national government was the controlling stockholder and there were very few private stockholders with minimal investments. However, when the provisions of RA 6848 were implemented, the number of private stockholders rose to several hundreds in 1993, and more in 1994. So the equation on ownership was reversed gradually owing to the failure of the government to put up its share (Series "A") of investments. Only the private stockholders were able to put up investments by subscribing to Series "B" and "C' shares. And so from 1994, the private stockholders held the controlling interest.

Since the passage of R.A. 6848 and after its formal organization of the Islamic Bank on April 28, 1992, the old Central Bank Act and the old General Banking Law were repealed by new laws. The new banking laws had the effect of amendments to R.A 6848. The said amendments were all for the greater benefit of the Islamic Bank. On the other hand, the new banking laws were all unfavorable to the Central Bank. Most of its powers were truncated. The new laws also greatly diminished the powers of the Monetary Board. Most of these powers were transferred to the Securities and Exchange Commission and the Department of Finance.

The ouster of some directors and officers of the abolished Philippine Amanah Bank was the reason behind the filing of baseless and malicious cases against the private group of stpckholders leadership of the Dianaton and Mangompia group in the new Islamic Bank. Because of these cases, there were Court Orders, and eventually a Decision of the Hon Court of Appeals, and finally some Resolutions of the Hon. Supreme Court, as well as a Motion and Manifestation of the Office of the Solicitor General. These Decision, Court Orders, and Court Resolutions reinforced the legality of the private group of stockholders in the Islamic Bank. They also served directly as clarifications to some provisions of R.A. 6848.

Until recently, the central banking system in the Philippines had been governed by republic act 267. That was the central bank act of 1948, the charter of the old central bank of the Philippines. The powers of the old central bank of the Philippines were exercised by the old monetary board, which was also organized pursuant to this old law. In exercising its excessive authority, as a regulatory and supervisory board, most of its powers were derived from the old general banking act, republic act no. 337, a law of general banking applications. Under these two outdated laws, the then monetary board was vested with so much power befitting a martial law regime

There were many controversies in the old central bank. So, to make the story short, the central bank of the Philippines was abolished. We now have the bangko Sentral ng Pilipinas under the so-called new central bank act, otherwise known as republic act no. 7653

In the case of Roberto s. benedicto, et. al. vs. court of appeals g.r. no. 125359 september 4, 2001, a comparison between the old central bank under republic act no. 267 and the new central bank (bangko sentral) under republic act no. 7653 was made by the honorable supreme court as follows:

begin quote

A comparison of the old central bank act and the new *bangko sentral*'s charter repealing the former show that in consonance with the general objective of the old law and the new law "to maintain internal and external monetary stability in the Philippines and preserve the international value of the peso," both the repealed law and the repealing statute contain a penal clause which sought to penalize in general, violations of the law as well as orders, instructions, rules, or regulations issued by the monetary board. In the case of the *bangko Sentral*, the scope of the penal clause was expanded to include violations of "other pertinent banking laws enforced or implemented by the *bangko Sentral*." in the instant case, the acts of petitioners sought to be penalized are violations of rules and regulations issued by the monetary board. These acts are proscribed and penalized in the penal clause of the repealed law and this proviso for proscription and penalty was reenacted in the repealing law. We find, therefore, that while section 34 of republic act no. 265 was repealed, it was nonetheless, simultaneously reenacted in section 36 of republic act no. 7653.

Where a clause or provision or a statute for the matter is simultaneously repealed and reenacted, there is no effect, upon the rights and liabilities which have accrued under the original statute, since the reenactment, in effect "neutralizes" the repeal and continues the law in force without interruption. The rule applies to penal laws and statutes with penal provisions. Thus, the repeal of a penal law or provision, under which a person is charged with violation thereof and its simultaneous reenactment penalizing the same act done by him under the old law, will neither preclude the accused's prosecution nor deprive the court of its jurisdiction to hear and try his case.

]

> **as pointed out earlier, the act penalized before the reenactment continues to remain an offense and pending cases are unaffected. therefore, the repeal of republic act no. 265 by republic act no. 7653 did not extinguish the criminal liability of petitioners for transgressions of circular no. 960 and cannot, under the circumstances of this case, be made a basis for quashing the indictments against petitioners. [roberto s. benedicto, et. al. vs. court of appeals g.r. no. 125359 september 4, 2001]**

end quote

The new central bank act was enacted on June 14, 1993. It is the charter of an independent central monetary authority known as the bangko Sentral ng Pilipinas. whereas the charter of the al Amanah Islamic investment bank of the Philippines, republic act no. 8648, was signed into law on January 26, 1990. this is the governing law of this bank.

there are provisions of the charter of the islamic bank that relate to the old and the new central bank acts. the most significant of these provisions are sections 43 and 46 of ra 6848 which provide as follows:

> **sec. 43. application of the islamic shari'a. -the monetary board of the central bank of the philippines shall formulate the necessary rules and regulations to carry out the provisions of this charter for the purpose of providing adequate credit facilities primarily to the people of the autonomous region, and to supervise the operation of the islamic bank in accordance with the universal principle of the islamic shari'a.**
>
> **Sec. 46. Supervision and regulation by the central bank. -The Islamic bank shall be under the supervision and regulation of the central bank. All provisions of this act, except those which pertain to the principles of shari'a, shall be subject to all banking and pertinent laws of the Philippines and central bank rules and regulations which shall include proper safeguards to depositors and investors in the investments, partnerships, agencies and other operations of the bank.**

on section 43 of ra 6848, the following notations have been made by the islamic banking research institute:

> **note 43-1. the monetary board of the central bank that is referred to in section 43 was the old monetary board under republic act no. 265 (the old central bank act). this must be distinguished from the present (new) monetary board whose powers and duties are defined under a new law that is republic act no. 7653 (the new central bank act). the distinction is important because the new monetary board (under ra 7653) does not carry all the legal mandate and powers of the old monetary board (under ra 265). for example, "all fiscal agency functions of the old central bank as provided for in sections 117, 118, 119, and 120 in the old central bank act, had been phased out and transferred to the department of finance. also the regulatory powers of the old monetary board concerning the operations of finance corporations and other institutions performing similar functions had been phased out under the new law.**

note 43-2. the monetary board referred to in section 43 of ra 6848 failed to perform its duty to" formulate the necessary rules and regulations to carry out the provisions of ra 6848." from the time ra 6848 was approved on january 26, 1990 until the old central bank was abolished by a new central bank act on june 14, 1993, the monetary board had been unmindful about the islamic bank.

note 43-3. on june 14, 1993, the new central bank act was signed into law, and with it the bangko sentral ng pilipinas was created as well as a new monetary board. for a long time, even this new monetary board sits on the job that it was required of them to do under section 43 of ra 6848.

note 43-4. after a delay of six years, the monetary board, in its resolution nos. 161 and 244 dated february 14 and march 6, 1996, respectively, approved the implementing rules and regulations for the islamic bank pursuant to section 43 of r.a. 6848.

note 43-5. on april 24, 1996, the monetary board issued bangko sentral circular no. 105, series of 1996 proclaiming the special rules and regulations for islamic banking in the philippines.

note 43-6. on may 23, 2000, republic act no. 8791, otherwise known as the new general banking act of 2000, was enacted into law. like a wild storm, this new law partly demolished the rules and regulation on islamic banking under bangko sentral circular 105.

the old general banking law (ra 265) was the first to have been demolished by the new general banking law. consequently all rules and regulations in pursuance of the old general banking law were repealed. but this is another story. suffice it to say that the bangko sentral and the monetary board have only insignificant legal mandate that they can enforce in their supervision of the islamic bank. all that is left is ministerial in nature.

on section 46 of RA 6848, the following notations have been made:

note 46-1. the new general banking act of 2000 has amended section 46. this law provides that special laws shall govern the islamic bank. this means that the islamic bank is no longer subject to all banking laws of the philippines.

note 46-2. compare section 46 to section 39 of RA 6848 where it states that: "the provisions of the central bank act (now the new central bank act) and the general banking act (now the new general banking act) shall not apply to the Islamic Bank".

when the implementing rules and regulations (IRR) for the Islamic Bank was formulated by the monetary board in 1996, it was obviously done in haste. the IRR includes all sort of rules and regulations applicable to all banks in general including the receipt and payment of interests (riba) which is what the charter of the Islamic Bank prohibits, made illegal and punishable. In this connection, the decision of the honorable Supreme Court in the case

cited above that compares the old and new central bank acts must be underscored. in that comparison, the supreme court held: "in the case of the *bangko sentral*, the scope of the penal clause was expanded to include violations of "other pertinent banking laws enforced or implemented by the *bangko sentral*." republic act 6848 is part of "other pertinent banking laws enforced or implemented by the bangko sentral".

Republic Act 6848 provides:

> **sec. 44. definition of terms. -for purposes of this act, the following definition of terms is hereby adopted:**
>
> **xxx**
>
> **(2) islamic banking business means banking business whose aims and operations do not involve interest (riba) which is prohibited by the islamic shari'a principles [underscoring supplied] ;**
>
> **(3) shari'a has the meaning assigned to it by islamic law and jurisprudence as expounded by authoritative sources; in the context of this act, it is construed by reference to pertinent qur'anic ordinances and applicable rules in islamic jurisprudence or business transactions;**
>
> **(4) riba has the meaning assigned to it by islamic law and jurisprudence as expounded by authoritative sources; in the context of banking activities, the term include the receipt and payment of interest in the various types of lending and borrowing and in the exchange of currencies on forward basis; [underscoring mine]**

on the contrary, bsp circular 105, the irr provides:

> **sec. 47. circular 105. transformation to islamic banking business**
>
> **xxx**
>
> **during the transformation period, the bank may continue to perform conventional banking activities under r.a. 337, as amended, insofar as they are not in conflict with r.a. 6848, and the applicable rules and regulations of the bangko sentral ng pilipinas.**

this rule is covered with smokescreen, amounting to a cover up. it is to be noted that there was a clear conflict between r.a. 337 and r.a. 6848. the former was the old general banking law which allows the payment and receipt of interests. on the other hand, r a 6848 is the charter of the al amanah islamic investment bank of the philippines which prohibit, made illegal and punishable the payment and receipt of interest. but this is already moot and academic now because ra 337 was the old general banking law that was already repealed by the new gbl of 2000. and the islamic bank is now governed by its charter.

republic act 6848 provides:

sec. 39. -in order to achieve the international and domestic objectives of islamic banking business, the provisions of the following acts and laws shall not apply to the islamic bank to the extent as herein rendered inoperative:

(1) **the provisions of the central bank act and the general banking act with particular reference to the determination of bank interest rates, loans and discounts, and any interest-bearing instruments or charge: provided, that nothing contained herein shall be construed to impair the powers of the central bank to supervise and regulate the activities of the islamic bank**

xxx

sec. 43. -the monetary board of the central bank of the philippines shall formulate the necessary rules and regulations to carry out the provisions of this charter for the purpose of providing adequate credit facilities primarily to the people of the autonomous region, and to supervise the operation of the islamic bank in accordance with the universal principle of the islamic shari'a. [underscoring ours]

sec. 50. - this act, upon its effectivity, shall be deemed accepted for all legal intent and purposes as the statutory articles of incorporation of the al amanah islamic investment bank of the philippines; and that notwithstanding the provision of any existing law to the contrary, said islamic bank shall be deemed registered and duly authorized to do business and operate as an islamic bank as of the date of approval of this act. [underscoring ours]

on the other hand, bsp circular 105 did not touch on the fact ra 6848 provides certain exemptions of the islamic bank from certain provisions of the central bank act, ra 267 and the general banking act., ra 337. instead of highlighting these extraordinary exemptions, the monetary board superimposed on the irr the applicability of other banking laws, rules and regulations. this is clearly a reversal of the intended exclusion of the islamic bank from other laws, rules and regulations. it was an attempt to rewrite the law which is prohibited by the supreme court, as mentioned earlier. again, the supreme court warns:

"the monetary board may not tread on forbidden grounds. it cannot rewrite other laws. that function is vested solely with the legislative authority.

cover up in the IRR

BSP circular 105 provides:

sec. 46. supervision; applicability of banking laws, rules and regulations

the islamic bank shall be under the supervision of the bangko sentral. the provisions of other banking laws, mrbofi, as well as the existing rules and regulations of the bangko sentral, particularly those enumerated under annex "b", and other pertinent laws insofar as they are not in conflict with the provisions of r.a. no. 6848 and these rules and regulations shall be applicable to the islamic bank.

it can be seen very clearly that there is an amount of cover up in the irr to frustrate the nature of the islamic bank as well defined under its charter and to defeat the very essence of islamic banking.

In 1967, the hon. supreme court of the Philippines defines the role of the central bank of the Philippines and delimits its statutory powers as follows:

“The central bank is a government corporation created principally to administer the monetary and banking system of the republic, not a prosecution agency like the fiscal’s office. Being an artificial person, the central bank is limited to its statutory powers and the nearest power to which prosecution of violators of banking laws maybe attributed is its power to sue and be sued. But this corporate power of litigation evidently refers to civil cases only.” (Damaso p. perez vs. the monetary board, g.r. no. L-23307, June 1967)

At its most fundamental level, a central bank is simply a bank like any other banks. More prosaically, a central bank is usually a government-sanctioned bank that has specific duties. Typically, a central bank is charged by a central government to control the money supply for the purpose of promoting economic stability. It may have other duties as well such as those relating to regulation and supervision of other banks in the financial system, operating a check-clearing system, or to perform general banking services for the central government.

only few years after it was established by law, the bangko sentral ng pilipinas suffered a credibility crisis. allegedly, some officers of the bsp act with arbitrariness and excesses. on april 26, 2000, to cite one particular case, the bangko sentral padlocks the urban bank. three years later it was discovered by the high court of appeals to have been closed in a haphazard manner. the 19-page decision was penned by associate justice eugenio labitoria, who said the bsp should have exercised due diligence in accordance with the procedure on ordering the closure of banks as outlined in the new central bank act of 1993.

in its decision, the ca reversed a ruling by the office of the ombudsman when it found that the bangko sentral governor buenaventura "administratively liable of gross neglect of duty" when the bsp ordered the closure of urban bank. according to the court ruling, "the closure of urban bank inc., urbancorp development bank and urbancorp investments inc. was done in an arbitrary manner violative of fair play and committed with grave abuse of discretion."

consequently, former bangko sentral governor rafael buenaventura, deputy governor alberto reyes and other high ranking officers of the bangko sentral were suspended by the hon. court of appeals for one year without pay. this was certainly a controversial issue in the banking community.

if congress had its way, it would have abolished the bangko Sentral ng Pilipinas and the monetary board as early as 1999. a group of legislators actually pushed for the removal of the monetary board and replace it with a commission to take charge of supervision and regulation over banks. however, in order to survive, the bsp was quick to raise the issue on constitutionality. in a bsp press statement, released on march 11, 1999, the bsp reminds some legislators that the supervisory and regulatory powers of bsp are based on a constitutional provision. this was the statement of bsp in respond to the reports that congressmen sergio apostol and feliciano belmonte and other legislators were pushing for the replacement of the monetary board by an independent commission to be created by congress. the commission supposedly will replace the monetary board in supervising banks and financing companies. the bsp cited section 20, article 12 of the 1987 constitution which provides "that congress shall establish an independent central monetary authority ... (which) shall provide policy direction in the areas of money, banking and credit. it shall have supervision over the operations of banks and exercise such regulatory powers as may be provided by law over the operation of finance companies and other institutions performing similar functions.

congress, however, may clip the powers of the monetary board. that much it can do. and congress did clip the powers of the monetary board. this was done not by enacting the new general banking act of 2000. this replaces the old general banking act, ra 337.

at the time the monetary board padlock the urban bank, there was already a bill about banking laws pending in congress. on may 23, 2000, the philippine legislature put an end to the general banking act (gba) republic act no. 337. needless to say, all the powers of the monetary board that were derived from the gba were also washed overboard. congress enacted a new general banking law of 2000 (gbl 2000); republic act no. 8791.as for the islamic bank, section 71 of the new gbl 2000 provides that:

> **"the organization, ownership and capital requirements, powers, supervision and general conduct of business of islamic banks shall be governed by special laws."**
> **with this provision of law, the rules and regulations pertaining to the islamic bank were capsulated back to the original image-file of its charter with few exceptions.**

ANNEX B is a copy of the new central bank act, Republic Act No. 7653.

As a founding chairman, I stand witness to the ownership of the Islamic Bank by those who invested in the Islamic Bank from 1992 t0 1998. These were made by subscribing to the shares of the bank in the manner prescribed by the charter of the Islamic Bank, Republic Act No. 6848. This is the special law that governs the ownership of the Islamic Bank, as provided for by this law (enacted in 1999) and as recently updated by the new General Banking Act of 2000.

The background of privatization in the Philippines is summarized below.

Before the fall of President Ferdinand Marcos, he issued two successive Presidential Decrees, PD 2029 and PD 2030. These two Decrees declared privatization as a matter of national policy. Privatization was actually an implementation of the Structural Adjustment Program that was imposed by the International Monetary Fund and the World Bank.

On February 1986, President Cory Aquino succeeded Marcos by the popular people power. Aquino pursued vigorously the implementation of the privatization laws. In addition to PDs No. 2029 and 2030, Aquino signed into law Proclamation No. 50, creating the Committee on Privatization (COP) and the Assets Privatization Trust (APT) to administer the implementation of privatization.

In 1989, the Congress of the Philippines passed a bill that eventually was signed into law as R. A. 6848. Former Pres. Corazon C. Aquino signed this special law on January 26, 1990. This is a special law for the creation and eventual privatization of the new Al Amanah Islamic Investment Bank of the Philippines (AIIBP).

In 1998, Executive Order No. 12 was issued and reaffirmed the privatization policy of the Government by encouraging all heads of departments, bureaus, agencies and instrumentalities including government owned and controlled corporations to identify assets and activities that can be efficiently and effectively undertaken by the private sector; by broadening the coverage of privatization activities with the inclusion of some authorities such as Bases Conversion and Development Authority (BCDA), Public Estates Authority (PEA), Philippine Tourism Authority (PTA), Philippine Economic Zone Authority (PEZA) and Subic Bay Metropolitan Authority (SBMA).

Executive Order No. 12 also directed the COP to consider other alternative modes of privatization such as leasing, management and maintenance contracts, BOT schemes or joint venture arrangements.

Pursuant to Republic Act No. 8758 (1999), the life of the Committee on Privatization (COP) and the Asset Privatization Trust (APT) expired on December 31, 2000. Republic Act No.

8758 provided that, "All assets held by the Asset Privatization Trust, all moneys and other properties belonging to it, and all its liabilities outstanding upon the expiration of its term shall revert to and be assumed by the National Government". Republic Act No. 8758 mandated the transfer for disposition of the assets held by the APT by the President of the Philippines to the trust department of the appropriate government agency upon the expiration of the term of APT.

As of December 2001, there were remaining partially sold and undisposed accounts approved for privatization consisting of 150 transferred assets, of which 88 are partially sold and 62 are still undisposed, 57 government-owned and controlled corporations, of which 31 have been partially sold and 26 are still undisposed. This includes the government shareholdings in the abolished Philippine Amanah Bank.

The abolished Philippine Amanah Bank was created by the Marcos Administration under Presidential Decree No. 264. On the other hand, the Amanah Islamic Bank was created by the Aquino Administration with a special law known as the charter of the Al Amanah Islamic Investment Bank of the Philippines.

The Philippine Amanah Bank does not exist anymore. It follows that it has no existing shares that can be legally sold. It follows; therefore that the Privatization Management Office was selling 9 million NON-EXISTING SHARES for a price of Pesos 900 million, as advertised.

Chapter 8- intracorporate controversy

While the board of directors was formulating the Islamic Bank Arbitration pursuant to the provisions of Republic Act No. 6848, otherwise known as the Charter of the Al Amanah Islamic Investment Bank of the Philippines, I checked on the Holy Qur'an and the Hadith about Islamic arbitration. I found so many basis of arbitration both in the Holy Qur'an and in the Hadith. The following is my favorite. If the story below happens in our time frame, it may be titled as the "The angels of mercy vs. the angels of torment". And then may be one can add the appropriate case number or docket number.

The following narration of the Prophet Muhammad, peace be on him, is very entertaining to me, besides providing the divine guidance in the Islamic perspective. The story goes this way:

"There was a man from among a nation before you who had murdered ninety nine persons. Thereafter he made an inquiry about who could be the most learned person on earth. He was directed to a monk. Then he went to see the monk. He asked if his repentance would be accepted (and be forgiven). The monk replied in the negative. And so he also killed the monk, his 100th victim.

"After having killed one hundred persons, the murderer made another inquiry as to who could be the most learned man on earth. This time he was directed to a scholar. Then he presented his case to the scholar and asked if his repentance could be accepted (and be forgiven). The scholar replied in the affirmative and asked: 'Who stands between you and repentance? Go to such and such a place; there (you will find) people devoted to prayer and worship of Allah, join them in worship, and never come back to your land because it is an evil place.' So the man walked away (towards such a land of piety and worship as directed) and hardly had he covered half the distance when death overtook him; and there arose a DISPUTE between the angels of mercy and the angels of torment. The angels of mercy pleaded: 'This man has come with a repenting heart to Allah.' The angels of punishment refuted, saying: 'He never did a virtuous deed in his entire life'

"Then, there appeared another angel in human form. The contending angels agreed to appoint him as an ARBITER (Thereby submitting to ARBITRATION). "The Arbiter resolved the case by a decision after some good reasons. The DECISION of the arbiter was carried. And the man was taken by the angels of mercy rather than the angels of torment. That goes to say he was brought to Heaven rather than Hell. There are other portions of the tale but the only point of this narrative in this book is to say that there is a dalilor basis of ARBITRATION in SHARIA'

Chapter 10- Arbitration in the Bank

On January 26, 1990, President Corazon C. Aquino signed into law R. A. No. 6848, the Charter of the Al Amanah Islamic Investment Bank of the Philippines. R.A. 6848 repealed the charter of the Philippine Amanah Bank.

Under the charter, all business dealings with Islamic banking, finance, trade, and commerce must adhere to Islamic economics, which is the common reference of all Muslims of the World today and tomorrow. This is the standard under Sharia'. It is common to all Muslims around the World. It is a standard that will never change for all time. That is a fact about Sharia. Its foundation, the Holy Qur'an will never change. The Hadith likewise will never change. Any deviation from the standard that was set by the Holy Qur'an and the Hadith is called "bida'a" and it will be rejected by any real Sharia' counsel. Said "Bida'a"or deviation from standard will be accepted from innovators. Shariah accepts no compromise. For instance, interest charges maybe disguised as bank charges. This kind of deviation will not be honored by any real Sharia' counsel. Islamic banking under the principles of Sharia' represents a standard way of economic life. Muslims and non-Muslims alike will learn from these moral standards in all business deals. . In its mandate to formulate the rules and regulations for the Islamic Bank, the Monetary Board in the Philippines was required by law under Section 48 of RA 6848 to observe "the universal principle of the Islamic Sharia'". Paramount of this significant development in international banking is the fact that the Muslim way of doing business is gaining understanding and acceptance in the world of business. This could be the start of international harmony among nations.

Many years ago in 2005, even the Federal Bank of USA acknowledges Islamic finance as an important development in international banking. That is according to William L. Rutledge, Exec. V P of the Federal Reserve Bank of New York, in his "Remarks at the 2005 Arab Bankers Association of North America (ABANA) Conference on Islamic Finance: Players, Products & Innovations in New York City... He further said that as US regulators, they "are open to Islamic financial products" within the U.S. structure. The charter of the Islamic Bank provides for a Sharia' Advisory Counsel to review transactions of the bank in accordance with the Sharia' standards. The law also provides that the Board of Directors shall sit as a Board of Arbitration to settle intra-corporate disputes among shareholders and investors. To implement this mandate, the Board of Directors was authorized by law to set the rules and procedure that it shall follow in the arbitration while the Monetary Board was mandated to formulate the rules and regulation The bank was formally organized on April 28, 1992.

Soon after, the Rules of Practice and Procedure before the Board of Arbitration was adopted and promulgated by the Board of Directors. Even if it was rather late, the Monetary Board also issued the Implementing Rules and Regulation (IRR) for the Islamic Bank under BSP Circular 105.

In promulgating the said Rules, the Securities and Exchange Commission, the Bangko Sentral ng Pilipinas, and the Office of the President of the Philippines, and the Office of the Solicitor General were furnished their copies in accordamce with pertinent laws

Section 9, RA 6848 provides: "SEC. 9. Board of Arbitration. - The Board of Directors, acting as an arbitrator, shall settle by the majority decision of its members any dispute between and among shareholders of the Islamic Bank, whether individuals or entities, where such dispute arises from their relations as shareholders in the Islamic Bank. The Board shall not be bound in this respect to the procedures of laws on civil and commercial pleadings, except in regard to the basic principles of due process.

Section 9, R.A. 6848 provides for a Board of Arbitration and specified that: "The final judgment shall be deposited with the office of the Corporate Secretary of the Bank and the Securities and Exchange Commission." The law also: provides that: "The Board of Arbitration shall meet at the Islamic Bank's principal office and shall set up the procedure of arbitration which it shall follow in hearing and deciding the dispute. Pursuant to this mandate of law, the Board of Directors adopted on March 30, 1993 the Rules of Practice and Procedure

If **the dispute is between the Islamic Bank and any of the investors or the shareholders, a Board of Arbitration shall settle such dispute. In this case, the Board of Arbitration, consisting of three (3) members, shall be formed by two (2) parties to the dispute within forty-five (45) days from receipt of written notice by either party to the dispute. The three (3) members shall be selected as follows: one (1) arbitrator from each party who shall then select a casting arbitrator as the third member of the board. The three (3) shall select one of them to preside over the Board of Arbitration. The selection by each party of its arbitrator shall be deemed as an acceptance of the arbitrator's decision and of its finality. In the event that one of the two parties shall fail to select its arbitrator or in the case of nonagreement on the selection of the casting arbitrator or the presiding member of the Board of Arbitration within the period specified in the preceding paragraph, the matter shall be submitted to the Shari'a Advisory Council to select the Arbitrator, the casting arbitrator or the presiding member, as the case may be. "The Board of Arbitration shall meet at the Islamic Bank's principal office and shall set up the procedure of arbitration which it shall follow in hearing and deciding the dispute. The decision shall include the method of its execution and the party that shall incur the costs of arbitration. The final judgment shall be deposited with the office of the Corporate Secretary of the Bank and the Securities and Exchange Commission. "The Board of Arbitration's decision, shall in all cases, be final and executory. Itshall be valid for execution in the same manner as final judgments are effected under Republic Act No. 876 otherwise known as the Arbitration Law.**

In September of 1993, six months after the adoption and promulgation of the Rules of Practice and Procedure, the Bangko Sentral prodded the Securities and Exchange Commission to rule on intra-corporate controversies then prevailing in the Islamic Bank. It was a case between the Board of Directors of the abolished Philippine Amanah Bank led by Roberto de Ocampo and Farouk Carpizo and the Board of Directors of the Al Amanah Islamic Investment Bank of the Philippines created under RA 6848 led by Abdel Aziz Dimapunong.. This provided a test of whether the S.E.C. will take cognizance of intra-corporate controversies in the Islamic Bank.

In response, the SEC (ruling en banc on October 1993) passed the responsibilities to the authority of the Islamic Bank Board of Arbitration to settle any controversy the bank might sustain. This then confirms that the Islamic Bank has jurisdiction over intra-corporate disputes among its stockholders and investors... It is then on record that the Securities and Exchange Commission did not encroach on the jurisdiction of the Board of Arbitration of the Islamic Bank. In order to further clarify the legal basis of the SEC, I wrote a letter of inquiry to the SEC in my capacity as then chairman of the Islamic Bank. I got a reply from no less than the chairman of the SEC, the Hon. Rosario N. Lopez. She responded to me by citing "the SEC ruling in Alfredo C. Gray, Sr. vs. Augustine Marketing et. el., (SEC Case No. 2102 dated March 9, 1992) wherein it was held that the Commission has no jurisdiction over corporations created by special law".

The jurisdiction of the Islamic Bank over corporate controversies among its stockholders and investors was argued upon in the Court of Appeals in a case that I filed in my capacity as then Chairman. It was a petition for certiorari entitled "Abdel Aziz Dimapunong vs. Hon Judge Zosimo Angeles, C.A. GR. SP. No. 28445. In this case, the Office of the Solicitor General of the Philippines submitted its Motion and Manifestation, where it manifested thus: "A better and certainly much wiser rule is, to consider the ultimate source of the controversy as determinative of whether the SEC has jurisdiction over a given case: x x x [The existence of [an] intra-corporate relationship at the time of the filing of the complaint does not determine the jurisdiction of the Securities and Exchange Commission. x x x Rather, the factor which decides whether the action is within the jurisdiction of the Commission is just what the law provides, i.e., the controversy arose out of intracorporate relations between and among the stockholders [and the corporation]. (Securities and Exchange Commission v. Court of Appeals, 201, SCRA 124, 136; emphasis supplied)

Applying the foregoing rule, it is evident that the controversy below arose out of intra-corporate relations. The complaint by AIIBP questions the apparent usurpation of functions by the Dimapunong Group. The latter, however, appears to have acted only in pursuance of the mandate they received at the annual General Shareholders Meeting. They participated in said meeting either by virtue of their right as private stockholders or the nomination given by stockholders or AIIBP. Ultimately, the precursor of the dispute between AIIBP and the Dimapunong Group is, in the case of petitioner Dimapunong and Santos, the nomination given by the office of the President and the GSIS, respectively, and, in the case of petitioners Abbas, Malambut and Dianaton, their right as private stockholders to vote and be voted for as directors or officers of the corporation. Thus the case below is clearly one which arose out of the intra-corporate relations between AIIBP and its stockholders.

That was the manifestation of the Office of the Solicitor General in so far as the determination of intra-corporate controversy is concerned. The issue on jurisdiction is another matter. Under what circumstance an intra-corporate controversy falls under the jurisdiction of the Islamic Bank Board of Arbitration? On this matter, the following is the Manifestation of the OSG: "Republic Act No. 6848, the charter of the AIIBP, provides for a Board of Arbitration to settle conflicts between and among shareholders of AIIBP, and between the latter and any of its investors and shareholders: Sec. 9. Board of Arbitration – The Board of Directors, acting as arbitrator, shall settle by majority decision of its members any dispute between and among shareholders of the Islamic Bank, whether

individuals or entities, where such dispute arises from their relations as shareholders in the Islamic Bank. x x x xxx "As mentioned the complaint in Civil Case No. 92-1487 was filed by AIIBP, impleading as defendants therein both stockholders and non-stockholders. Obviously, the above provision defining the jurisdiction of the Board of Arbitration finds no application to the case below by reason of the inclusion of non-stockholders in said Complaint".

The Motion and Manifestation of the OSG in the example case above was the consideration taken by the Hon. Court of Appeals in its Decision on the case. Stated in summary, the Board of Arbitration has jurisdiction over a case when the case involves only stockholders and investors of the Islamic Bank. It has no jurisdiction when a case involves non-stockholders or no investors. It has no jurisdiction when the case involves third parties.

In one of its rulings about arbitration, the Supreme Court held in the case of Del Monte Corporation-USA vs. Court of Appeals, Judge Bienvenido L. Reyes, et al. (G.R. No. 136154, February 7, 2001): "…
The provision to submit to arbitration any dispute arising therefrom and the relationship of the parties is part of that contract and is itself a contract. As a rule, contracts are respected as the law between the contracting parties and produce effect as between them, their assigns and heirs. Clearly, only parties to the Agreement, i.e., petitioners DMC-USA and its Managing Director for Export Sales Paul E. Derby, Jr., and private respondents MMI and its Managing Director LILY SY are bound by the Agreement and its arbitration clause, as they are the only signatories thereto. Petitioners Daniel Collins and Luis Hidalgo, and private respondent SFI, not parties to the Agreement and cannot even be considered assigns or heirs of the parties, are not bound by the Agreement and the arbitration clause therein. Consequently, referral to arbitration in the State of California pursuant to the arbitration clause and the suspension of the proceedings in Civil Case No. 2637-MN pending the return of the arbitral award could be called for25 but only as to petitioners DMC-USA and Paul E. Derby, Jr., and private respondents MMI and LILY SY, and not as to the other parties in this case. This is consistent with the recent case of Heirs of Augusto L. Salas, Jr. v. Laperal Realty Corporation, which superseded that of Toyota Motor Philippines Corp. v. Court of Appeals."

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The principles of Shariah such as Islamic arbitration in Islamic banking are now being applied not only in the global banking industry but also in many sectors of the business world and the some academies of higher learning. The ethical standards of review that are now being introduced by the so called Sharia' advisory councils are now being adopted by western business entities.

The Sharia' advisory boards not only consider the conventional project viability and feasibility – but they also look beyond the traditional way. This is the "Sharia'" standard which could include appropriateness, fairness, trust, transparency, the ethical nature of transactions, as well as social responsibility, especially to the poor, the wayfarer, those afflicted with illness, victims of calamities such as the "Tsunami", and all those in need. That is why the charter provides for "zakat" or tithe. It also provides for "Qard Al Hassan" which means benevolent loans. A "zakat" is paid by every God-fearing believer for the

benefit of the poor and the needy. A benevolent loan (Qard al Hassan) does not bear interest and repayment may not be expected.

All business dealings with Islamic banking, finance, trade, commerce, and, in fact all about Islamic economics, can be found in a common reference of all Muslims of the World today and tomorrow. This is the standard under Sharia'. It is common to all Muslims around the world. It is a standard that will never change for all time. That is a fact about Sharia. Its foundation, the Holy Qur'an will never change. The Hadith likewise will never change. Any deviation from the standard that was set by the Holy Qur'an and the Hadith is called "bida'a" and it will be rejected by any real Sharia' counsel. Said "Bida'a"or deviation from standard will be returned to innovators. There is no compromise. For instance, interest charges must not be disguised as bank charges. Islamic banking under the principles of Sharia' represents a standard way of economic life. Muslims and non Muslims alike will learn from these moral standards in all business deals. .

In its mandate to formulate the rules and regulations for the Islamic Bank, the Monetary Board in the Philippines was required by law under Section 48 of RA 6848 to observe "the universal principle of the Islamic Sharia'".

Paramount of this significant development in international banking is the fact that the Muslim way of doing business is gaining understanding and acceptance in the world of business. This could be the start of international harmony among nations.

ANNEX A
Charter of the Islamic Bank

REPUBLIC ACT NO. 6848

AN ACT PROVIDING FOR THE 1989 CHARTER OF THE AL-AMANAH ISLAMIC INVESTMENT BANK OF THE PHILIPPINES, AUTHORIZING ITS CONDUCT OF ISLAMIC BANKING BUSINESS, AND REPEALING FOR THIS PURPOSE PRESIDENTIAL DECREE NUMBERED TWO HUNDRED AND SIXTY-FOUR AS AMENDED BY PRESIDENTIAL DECREE NUMBERED FIVE HUNDRED AND FORTY-TWO (CREATING THE PHILIPPINE AMANAH BANK)

WHEREAS, the State, in Section 20, Article II of the Constitution, encourages private enterprise and provides incentives to needed investments;

WHEREAS, under the Constitution, the use of property bears a social function so that the consequences in law also must be defined by policy objectives related to property rights in productive enterprises;

WHEREAS, toward this end, the Government has committed itself to the establishment of an Islamic bank that operates within a legal framework permitting the investors or participants the rights to equitable or beneficial share in the profits realized from financing productive activities and other operations: Now, therefore.

THE CHARTER OF THE
AL-AMANAH ISLAMIC INVESTMENT BANK OF THE PHILIPPINES

SECTION 1. Title. — This Act shall be known as “he Charter of the Al-Amanah Islamic Investment Bank of the Philippines."

ESTABLISHMENT AND FUNCTIONS

SECTION 2. Name, Domicile and Place of Business. — There is hereby created the Al-Amanah Islamic Investment Bank of the Philippines, which shall be hereinafter called the Islamic Bank.ts principal domicile and place of business shall be in Zamboanga City. It may establish branches, agencies or other offices at such places in the Philippines or abroad subject to the laws, rules and regulations of the Central Bank.

SECTION 3. Purpose and Basis. — The primary purpose of the Islamic Bank shall be to promote and accelerate the socio-economic development of the Autonomous Region by performing banking, financing and investment operations and to establish and participate in agricultural, commercial and industrial ventures based on the Islamic concept of banking.

All business dealings and activities of the Islamic Bank shall be subject to the basic principles and rulings of Islamic Shari'a within the purview of the aforementioned declared

policy. Any zakat or "ithe" paid by the Islamic Bank on behalf of its shareholders and depositors shall be its obligation to appropriate said zakat fund and to disburse it in legitimate channels to be ascertained first by the Shari'a Advisory Council.

SECTION 4. Shari'a Advisory Council. — There is hereby created a Shari'a Advisory Council of the Islamic Bank which shall be composed of not more than five (5) members, selected from among Islamic scholars and jurists of comparative law.

The members shall be elected at a general shareholders meeting of the Islamic Bank every three (3) years from a list of nominees prepared by the Board of Directors of the Islamic Bank. The Board is hereby authorized to select the members of the first Shari'a Advisory Council and to determine their remunerations.

SECTION 5. Functions of the Shari'a Advisory Council. — The functions of the Shari'a Advisory Council shall be to offer advice and undertake reviews pertaining to the application of the principles and rulings of the Islamic Shari'a to the Islamic Bank's transactions, but it shall not directly involve itself in the operations of the Bank.

Any member of the Shari'a Advisory Council may be invited to sit in the regular or special meetings of the Board of Directors of the Islamic Bank to expound his views on matters of the Islamic Shari'a affecting a particular transaction but he shall not be entitled to vote on the question presented before the board meetings.

CORPORATE POWERS

SECTION 6. Islamic Bank's Powers. — The Al-Amanah Islamic Investment Bank of the Philippines, upon its organization, shall be a body corporate and shall have the power:

(1) To prescribe its bylaws and its operating policies;

(2) To adopt, alter and use a corporate seal;

(3) To make contracts, to sue and be sued;

(4) To borrow money; to own real or personal property and introduce improvements thereon, and to sell, mortgage or otherwise dispose of the same;

(5) To employ such officers and personnel, preferably from the qualified Muslim sector, as may be necessary to carry Islamic banking business;

(6) To establish such branches and agencies in provinces and cities in the Philippines, particularly where Muslims are predominantly located, and such correspondent offices in other areas in the country or abroad as may be necessary to carry on its Islamic banking business, subject to the provisions of Section 2 hereof;

(7) To perform the following banking services:

(a) Open current or checking accounts;

(b) Open savings accounts for safekeeping or custody with no participation in profit and losses except unless otherwise authorized by the account holders to be invested;

(c) Accept investment account placements and invest the same for a term with the Islamic Bank's funds in Islamically permissible transactions on participation basis;

(d) Accept foreign currency deposits from banks, companies, organizations and individuals, including foreign governments;

(e) Buy and sell foreign exchange;

(f) Act as correspondent of banks and institutions to handle remittances or any fund transfers;

(g) Accept drafts and issue letters of credit or letters of guarantee, negotiate notes and bills of exchange and other evidence of indebtedness under the universally accepted Islamic financial instruments;

(h) Act as collection agent insofar as the payment orders, bills of exchange or other commercial documents are exclusive of riba or interest prohibitions;

(i) Provide financing with or without collateral by way of leasing, sale and leaseback, or cost plus profit sales arrangement;

(j) Handle storage operations for goods or commodity financing secured by warehouse receipts presented to the Bank;

(k) Issue shares for the account of institutions and companies assisted by the Bank in meeting subscription calls or augmenting their capital and/or fund requirements as may be allowed by law;

(l) Undertake various investments in all transactions allowed by Islamic Shari'a in such a way that shall not permit the haram (forbidden), nor forbid the halal (permissible);

(8) To act as an official government depository, or its branches, subdivisions and instrumentalities and of government-owned or controlled corporations, particularly those doing business in the autonomous region;

(9) To issue investment participation certificates, muquaradah (non-interest-bearing bonds), debentures, collaterals and/or the renewal or refinancing of the same, with the approval of the Monetary Board of the Central Bank of the Philippines, to be used by the Bank in its financing operations for projects that will promote the economic development primarily of the Autonomous Region;

(10) To carry out financing and joint investment operations by way of mudarabah partnership, musharaka joint venture or by decreasing participation, murabaha purchasing for others on a cost-plus financing arrangement, and to invest funds directly in various projects or through the use of funds whose owners desire to invest jointly with other resources available to the Islamic Bank on a joint mudarabah basis;

(11) To invest in equities of the following allied undertakings:

(a) Warehousing companies;

(b) Leasing companies;

(c) Storage companies;

(d) Safe deposit box companies;

(e) Companies engaged in the management of mutual funds but not in the mutual funds themselves; and

(f) Such other similar activities as the Monetary Board of the Central Bank of the Philippines has declared or may declare as appropriate from time to time, subject to existing limitations imposed by law;

(12) To exercise the powers granted under this Charter and such incidental powers as may be necessary to carry on its business, and to exercise further the general powers mentioned in the Corporation Law and the General Banking Act, insofar as they are not inconsistent or incompatible with the provisions of this Charter.

CAPITAL RESOURCES OF THE BANK

SECTION 7. Authorized Capital Stock. — The authorized capital stock of the Islamic Bank shall be One billion pesos (P1,000,000,000) divided into ten million par value shares of One hundred pesos each. All shares are nominative and indivisible. The subscription to and ownership of such shares, including the transfer thereof to third parties, shall be limited to persons and entities who subscribe to the concept of Islamic banking.

SECTION 8. Classification of Shares:s Features. — The Islamic Bank's authorized capital stock shall have the following classifications and features in relation to its Islamic banking operation:

(1) Series "A" shares shall comprise five million one hundred thousand shares equivalent to Five hundred ten million pesos (P510,000,000) to be made available for subscription by the present stockholders of the Philippine Amanah Bank namely: the National Government, and such other financial entities as it may designate.

(2) Series "B" shares shall comprise nine hundred thousand shares equivalent to Ninety million pesos (P90,000,000) to be made available for subscription by the Filipino individuals and institutions.

(3) Series "C" shares shall comprise four million shares equivalent to Four hundred million pesos (P400,000,000) to be made available for subscription by Filipino and foreign individuals and/or institutions or entities.

Anyone of the shareholders may exercise its preemptive right to consolidate ownership of the outstanding shares as hereinafter increased: provided, that the common shares of the Philippine Amanah Bank which have been issued and outstanding shall form part of the

increased capitalization of the Islamic Bank, subject to the concurrence of the existing shareholders of the Philippine Amanah Bank.

The Islamic Bank is authorized to reacquire its common shares that are held privately.

The Islamic Bank may take the necessary steps to have its series "B" shares listed in any duly registered stock exchange.

SECTION 9. Board of Arbitration. — The Board of Directors, acting as an arbitrator, shall settle by the majority decision of its members any dispute between and among shareholders of the Islamic Bank, whether individuals or entities, where such dispute arises from their relations as shareholders in the Islamic Bank. The Board shall not be bound in this respect to the procedures of laws on civil and commercial pleadings, except in regard to the basic principles of due process.

If the dispute is between the Islamic Bank and any of the investors or the shareholders, a Board of Arbitration shall settle such dispute.n this case, the Board of Arbitration, consisting of three (3) members, shall be formed by two (2) parties to the dispute within forty-five (45) days from receipt of written notice by either party to the dispute. The three (3) members shall be selected as follows: one (1) arbitrator from each party who shall then select a casting arbitrator as the third member of the board. The three (3) shall select one of them to preside over the Board of Arbitration. The selection by each party of its arbitrator shall be deemed as an acceptance of the arbitrator's decision and of its finality.

In the event that one of the two parties shall fail to select its arbitrator or in the case of nonagreement on the selection of the casting arbitrator or the presiding member of the Board of Arbitration within the period specified in the preceding paragraph, the matter shall be submitted to the Shari'a Advisory Council to select the arbitrator, the casting arbitrator or the presiding member, as the case may be.

The Board of Arbitration shall meet at the Islamic Bank's principal office and shall set up the procedure of arbitration which it shall follow in hearing and deciding the dispute. The decision shall include the method of its execution and the party that shall incur the costs of arbitration. The final judgment shall be deposited with the office of the Corporate Secretary of the Bank and the Securities and Exchange Commission.

The Board of Arbitration's decision, shall in all cases, be final and executory.t shall be valid for execution in the same manner as final judgments are effected under Republic Act No. 876 otherwise known as the Arbitration Law.

SECTION 10. Incentives to Islamic Banking. — Subject to the provisions of Section 74 of the Central Bank Act, the provisions of the Omnibus Investment Code on the basic rights and guarantees of investors are made applicable to the commercial operations of the Islamic Bank in respect to repatriation or remittance of profits from investments, and to protection against nationalization, sequestrations, or expropriation proceedings. Any proceedings of judicial or administrative seizure may not be taken against the said property or investment except upon a final court judgment.

SECTION 11. Grants and Donations. — The Islamic Bank shall accept grants, donations, endowments, and subsidies, or funds and/or property offered by individuals and

organizations, who may earmark such grants for a specific purpose or for such other purposes beneficial to the Muslim communities, without prejudice to the general objectives of the Islamic Bank.

The financial statement and books of accounts of such funds shall be maintained separately but may be supplemented to the Islamic Bank's balance sheet.

Under special circumstances in which the Board of Directors considers it advisable to promote or facilitate Islamic banking business and commercial operations, the Islamic Bank may seek financing from governments, organizations, individuals or banks always without prejudice to the provisions of Section 43 of this Charter.

PLACEMENTS AND INVESTMENTS OF FUNDS

SECTION 12. Non-Interest Bearing Placements. — The Islamic Bank is authorized to accept deposits from governments, banks, organizations or other entities and individuals from within the Philippines or abroad which shall form under any of the following non-interest bearing placements:

(1) Saving accounts

(2) Investment participation accounts

(3) Current accounts and other deposit liabilities.

Any deposit received by the Islamic Bank without authorization to invest shall be treated as current accounts and savings accounts and may be withdrawn wholly or partly at any time.

All deposits received with authorization to invest for a given period of time shall form part of the general pool of placements allocated for investment portfolios of the Islamic Bank and may be added to its working capital to be invested in any special projects or in general areas of investments or commercial operations of the Bank.

SECTION 13. Investment of Funds. — The Islamic Bank shall have the capacity of agent or attorney and shall act with full authority on behalf of the group of depositors in general in investing their co-mingled deposits without prejudice to the following section and shall ensure a degree of liquidity to be determined by the Board of Directors to meet the current obligations of the Islamic Bank including drawings from savings accounts and current accounts: provided, that such degree of liquidity shall be subject to the reserve requirement as may be determined by the Central Bank. The Board of Directors shall determine the period for an investment participation account.nvestment of funds shall be undertaken by the Islamic Bank acting on behalf of the group of depositors or investors in selected areas of investment under such terms and conditions as the Board of Directors may determine by way of mudarabah or other forms of joint investment permitted by Islamic Shari'a principle.

SECTION 14. Return on Investment Funds. — The depositors or investors in joint investment participation accounts shall be entitled to a portion of the return on investment according to the deposit balances and its period. The profits on participation account with

authorization to invest in specific transaction shall be calculated on the same basis as on the capital funds invested as determined by the Board of Directors pursuant to Section 35 of this Act.

SECTION 15. Allocation of Resources. — Any provision of law to the contrary notwithstanding, the Islamic Bank may allocate part of its own investable funds or of the deposits on hand to finance investment projects and carry on its Islamic banking business directly or indirectly under its own supervision. For this purpose, it may create and finance investment companies or affiliates which shall manage investment projects on behalf of and under the supervision of the Islamic Bank and for its own account.

The Islamic Bank shall ascertain the viability and soundness of investment projects which it may directly supervise and those in which it may participate with part of its own funds, with the general pool of investors funds with authorization. The Islamic Bank shall have the right to inspect and supervise the projects which it shall finance or in which it is the majority shareholder. The original capital and related profits shall be remitted in the same currency it was originally contributed or in one of the convertible currencies, as the Board of Directors shall determine in accordance with this Charter.

ISLAMIC BANK OPERATIONS IN GENERAL

SECTION 16. Authorized Banking Services. — The Islamic Bank shall exercise all the powers and perform all the services of a bank, except as otherwise prohibited by this Act: provided, that no transactions by any customer, company, corporation or firm with the said Islamic Bank shall be permitted for discounts by the Central Bank of the Philippines.

SECTION 17. Authorized Commercial Operations. — Notwithstanding the provisions of any law to the contrary, the Islamic Bank is hereby authorized to operate an Investment House pursuant to Presidential Decree No. 129, as amended, and as a Venture Capital Corporation pursuant to Presidential Decree No. 1688 and, by virtue thereof, carry on the following types of commercial operations:

(1) The Islamic Bank may have a direct interest as a shareholder, partner, owner or any other capacity in any commercial, industrial, agricultural, real estate or development project under mudarabah form of partnership or musharaka joint venture agreement or by decreasing participation, or otherwise invest under any of the various contemporary Islamic financing techniques or modes of investment for profit sharing;

(2) The Islamic Bank may carry on commercial operations for the purpose of realizing its investment banking objectives by establishing enterprises or financing existing enterprises, or otherwise by participating in any way with other companies, institutions or banks performing activities similar to its own or which may help accomplish its objectives in the Philippines or abroad, under any of the contemporary Islamic financing techniques or modes of investment for profit sharing; and

3) The Islamic Bank may perform all business ventures and transactions as may be necessary to carry out the objectives of its charter within the framework of the Islamic Bank's financial capabilities and technical considerations prescribed by law and convention: provided, that these shall not involve any riba or other activities prohibited by the Islamic Shari'a principles.

SECTION 18. Employee Share Schemes. — The Board of Directors may adopt an employee profit sharing scheme under any of the following ways:

(1) Any arrangement under which the directors, officers and employees of the Islamic Bank receive in addition to their salaries and wages a share, fixed beforehand, in the profits realized by the Islamic Bank or by affiliate companies of the Islamic Bank to which the profit sharing scheme relates; and

(2) Any arrangement under which the Islamic Bank facilitates the acquisition by its directors, officers and employees of common shares of stock either as share-incentives, share-bonus options, or any other share-saving schemes as the Board of Directors may determine.

No scheme shall be approved by the Board of Directors under this section unless it is satisfied that the participant in the profit sharing scheme is bound by a contract with the Islamic Bank by virtue of which an appropriation of shares has been made for the purpose. The shares so purchased or appropriated shall be deposited in escrow with the Bank.

The Islamic Bank shall then constitute the trustees of an approved scheme, whose functions with respect to the common shares held by them are regulated by Chapter VII of the General Banking Act and other pertinent laws, and terms of which are embodied in a deed of instrument as the Board may require.

SECTION 19. Investment Ceilings; Business Limits. — The Islamic Bank shall observe the following investment ceilings and business limits in its operations:

(1) The aggregate credit facilities or any other liabilities of any customer of the Islamic Bank shall not exceed at all times fifteen per centum (15%) of the unimpaired capital and surplus of the Bank;

(2) The aggregate amount of investment portfolios for any single industry shall at no time exceed thirty per centum (30%) of the Islamic Bank's investment capacity.nvestment capacity of the Islamic Bank being the Islamic equivalent of commercial lending and overall credit ceilings shall be defined as the maximum expansion for investments and credits that the Islamic Bank is authorized to grant or extend as may be determined and computed by the Central Bank in relation to the unimpaired capital and surplus of the bank;

(3) The outstanding unsecured loans or credit accommodations which the Islamic Bank may extend at any time without security, or in respect of any advance, loan or credit facility made with the security wholly or partly, whenever at any time it exceeds the aggregate market value of the assets constituting the security, shall be limited to Fifty thousand pesos (P50,000.00) to any person, company, corporation or firm. The term loan whenever used in this paragraph shall represent qard hasan benevolent loan; and

(4) The Islamic Bank shall not grant any credit facility to any person for the purpose of financing the acquisition of the holding of shares in any company, corporation or firm in excess of fifty percent (50%) of the appraised valued of the shares at the time the credit facility is granted.

SECTION 20. Loans to Directors, Officers or Employees Restrictions. — Subject to the limitations provided herein, the Islamic Bank may grant to any of its officers or employees a loan as provided under its scheme of service and, whenever the Islamic Bank is satisfied that special circumstances exist, a loan not exceeding at any one time an amount equivalent to six (6) months remuneration of each officer or employee on such terms and conditions as the Islamic Bank deem fit. The Islamic Bank shall not, directly or indirectly, grant an advance loan or credit facility to any of its directors, officers or employees, or any other person for whom any of them is a guarantor or in any manner to be an obligor for money granted by the Islamic Bank. No loan or credit facility shall be granted by the Islamic Bank to a company, corporation, partnership or firm wherein any member of the Board of Directors or auditors is a shareholder, partner, manager, agent or employee in any manner, except with the written approval of and by the unanimous vote of no less than two-thirds (2/3) of all the members of the Board of the Directors excluding the director concerned: provided, that the total liabilities to the Islamic Bank shall be limited to the director or auditor's outstanding deposits or the book value of his or her paid-in capital in the Islamic Bank. Any such approval shall be entered upon the records of the Islamic Bank and a copy of such entry shall be transmitted forthwith to the appropriate supervising department of the Central Bank of the Philippines.

The office of any director, officer or auditor of the Islamic Bank who violates the provisions of this section shall automatically become vacant and the persons who acted in contravention thereof shall be subject to criminal prosecution and suffer the penalties provided by law.

SECTION 21. Special Cash Account. — The Islamic Bank shall open a special cash account with the Central Bank in which its liquid funds shall be deposited. Any transfer of funds from this account to the other accounts shall be made only upon prior consultation with the Islamic Bank.

SECTION 22. Capital Funds Requirement. — The Islamic Bank shall maintain its combined capital accounts in proportion to its assets as prescribed by the Central Banking Act and subject to the rules and regulations of the Central Bank.

SECTION 23. Investment Risk Fund. — The Islamic Bank shall maintain general reserves appropriations pursuant to the profit and loss distributions made under Section 35 of this Act. All amounts appropriated for the Investment Risk Fund out of the net profits of each year shall be invested for the benefit of the Islamic Bank only in safe non-interest-bearing transactions by authority of the Board of Directors.

SECTION 24. Periodic Reports. — The Islamic Bank shall, in addition to periodic reports which may be required pursuant to the provisions of any other law, be required to submit to the Central Bank a report of any changes relating to the Islamic Bank's employee profit sharing scheme approved by the Board of Directors.

The Islamic Bank shall likewise make a report to the Central Bank whenever a change is about to take place in relation to the ownership or control of the Islamic Bank. The approval of the Monetary Board shall be required in the following changes:

(1) Any proposal for the sale or disposal of its share or business, or other matters related thereto, which will result in a change of the control or management of the Islamic Bank; and

(2) Any scheme for reconstruction or for consolidation or merger, or otherwise, between the Islamic Bank and any other company wherein the whole or any part of the undertaking or the property of the Islamic Bank is to be transferred to another corporation.

BANK MANAGEMENT AND GENERAL MEETING

SECTION 25. Board of Directors. — The Board of Directors composed of nine (9) members duly elected by the General Shareholders Meeting, as provided for in this Act, shall convene at the principal office once every three (3) months at the most upon due notice by the Chairman or, whenever the need arises, upon the request of three (3) members of the Board of Directors. The Board may convene outside the Islamic Bank's principal office as the members shall determine in the bylaws of the Islamic Bank.

SECTION 26. Powers of the Board. — The Board of Directors shall have the broadest powers to manage the Islamic Bank, except such matters as are explicitly reserved for the general shareholders meeting. The Board shall adopt policy guidelines necessary to carry out effectively the provisions of this Charter as well as internal rules and regulations necessary for the conduct of its Islamic banking business and all matters related to personnel organization, office functions and salary administration.

The Board of Directors shall have the power to appoint managers, authorize agents or legal representatives and shall vest them with signing authority on behalf of the Bank either severally or jointly in accordance with the operational procedures of the Bank.

The Board shall cause the preparation of the Islamic Bank's balance sheet for each financial year within three (3) months at the latest from the end of each accounting period as well as the profit and loss statement according to accounting rules established and based on Islamic criteria. Copies of the audited annual balance sheet, profit and loss account, together with any note thereon, and the report of the auditor and the director's own report shall be provided to the shareholders before the date of the general meeting.

SECTION 27. Chief Executive Officer; Other Officers and Employees. — The Chief Executive Officer of the Islamic Bank shall be the Chairman who shall be chosen by the Board of Directors from among themselves. All other officers and employees of the Islamic Bank shall be appointed and removed by the Board upon recommendation of the Chief Executive Officer which shall not be subject to Civil Service Law.

The Chief Executive Officer of the Islamic Bank shall, among others, execute and administer the policies, measures, orders and resolutions approved by the Board of Directors.n particular, he shall have the power and duty: to execute all contracts in behalf of the Islamic Bank and to enter into all necessary obligations by this Charter required or permitted; to report weekly to the Board of Directors the main facts concerning the operations of the Islamic Bank during the proceeding week and suggest changes in policy or policies which will serve the best interest of the Islamic Bank.

SECTION 28. Business Development Office. — The Islamic Bank shall have a Business Development Office which shall be responsible for the following:

(1) To conduct periodic economic surveys and studies of the investment climate and opportunities in the Islamic Bank's sphere of operations and identify the viable projects which may be sponsored by the people of the Autonomous Region;

(2) To offer technical consultancy services in the preparation of project studies and in meeting other technical credit requirements of the Islamic Bank, including the provision of the management consultants at rates to be determined by the Board of Directors to projects financially assisted by the Islamic Bank; and

(3) To perform such other functions as may be directed by the Board of Directors.

SECTION 29. General Shareholders Meeting. — The general shareholders meeting shall convene annually at the latest within six (6) months following the end of the financial year of the Bank at the place, date and time fixed in the notice for the meeting. The attendance of shareholders representing at least sixty per centum (60%) of the capital of the Islamic Bank shall constitute a quorum to do business.

SECTION 30. Purpose of General Meeting. — The general shareholders meeting shall convene purposely to hear the Board of Directors' report on the activities of the Islamic Bank, its financial condition, the auditor's report and to approve the balance sheet for the financial year ended and the profit and loss statement, to determine the portion of dividends to be distributed to the shareholders and the method of distribution, to appoint the auditors, and to elect the members of the Shari'a Advisory Council.

SECTION 31. Ordinary and Extraordinary Sessions. — The general shareholders meeting shall be presided over by the Chairman of the Board of Directors. All resolutions adopted by the general meeting in ordinary session assembled shall be taken by a vote of majority of the shareholders represented therein and in case of votes being equal, the Chairman shall cast his vote to break the tie. The resolutions of the general meeting adopted in accordance therewith shall be binding on all shareholders including those not in attendance or opposing the resolution.

An extraordinary general meeting shall be required to pass resolutions related to the increase or decrease of capital of the Bank, the extension of its legal existence or matters affecting amendment of the Charter. Resolutions of the extraordinary general meeting shall be deemed adopted when a majority vote of at least sixty-six and two-thirds plus one per centum (66 & 2/3 + 1%) of the capital shares shall have been cast.

In no case shall the general meeting resolve to modify the object of the Bank as an Islamic Investment Bank.

SECTION 32. Bank Auditor: Reports. — Notwithstanding the provisions of any existing law to the contrary, the Islamic Bank is hereby authorized to appoint an external auditor approved by the general shareholders meeting whose qualification and remunerations shall be fixed by the Board of Directors. The external auditor appointed under this section shall assume his functions from the date of his appointment until the date of the next

general shareholders meeting.n case a vacancy occurs at any time during the year for any reason, the Board of Directors shall immediately appoint a replacement.

The duties of the auditor shall be to conduct an audit of the accounts of the Bank and to make a report to the Board of Directors.

In the exercise of his auditing functions, all Bank books, accounts and documents shall be made available to the auditor for inspection to ascertain the Bank's assets and obligations. Copies of the latest audited balance sheet, profit and loss statement, together with any note thereon, and the reports of the auditor to the Board of Directors shall be forwarded by the Islamic Bank, within the prescribed time to the Central Bank.

CONFIDENTIAL INFORMATION

SECTION 33. Confidential Information. — Banking transactions relating to all deposits of whatever nature are confidential and may not be examined, inquired or looked into by any person, government official, bureau or office except as provided in the preceding section, or upon written permission by the depositor, or in cases where the money deposited or the transaction concerned is the subject of a court order.

It shall be unlawful for any official or employee of the Islamic Bank or any person as may be designated by the Board of Director to examine or audit the books of the Bank to disclose or reveal to any person any confidential information except under the circumstances mentioned in the preceding paragraph.

PROFIT AND LOSS POLICY

SECTION 34. Accounting Period. — The Financial Year of the Islamic Bank shall be based on the Gregorian calendar, but the corresponding Islamic Hijra date shall be mentioned on all correspondence, contracts, printed materials, forms and records of the Islamic Bank. The accounting period shall commence from the first day of January and close at the end of December each year.

SECTION 35. Determination of Profits and Losses. — At the close of each financial year, the Islamic Bank shall determine the results of its operation, in the determination of which the portion of profits due to the Islamic Bank and the inventors shall be allocated pursuant to the provisions of this Act.

The Board of Directors shall, after deducting the general and administrative expenses of the Bank and all its operating expenses including remunerations of the Board of Directors and the Shari'a Advisory Council, determine annually what part of the income shall be appropriated to reserves, investors and shareholders.

All accounts relating to financing and joint investment operations shall be kept separately from the accounts from that of the other banking activities and services offered by the Islamic Bank. The same rule in respect to the accounts of specific investments shall apply where such specific projects may have a separate account.

Allocation of joint investment profits shall be made after deducting an amount equal to ten per centum (10%) of the profits realized from various operations during the financial year

to be transferred to a reserve account known as Investment Risk Fund for the purpose of meeting any losses exceeding the total profits derived from investments of that year: provided, however, that should the accumulated reserves equal the authorized capital of the Islamic Bank, the Board of Directors may reduce the amount of the annual deduction to a minimal percentage until the aggregate reserves become double the amount of the capital after which the herein authorized deductions shall cease to accrue to the reserve account.

Losses incurred, if any shall be deducted from the total profits realized for the financial year in which such losses are incurred but any excess of losses over the profits which have been actually realized during that year may be deducted from the Investment Risk Fund opened for covering the risks of investment: provided, that should the total profits realized in the year together with the reserves accumulated from previous year be insufficient to cover the losses incurred, the Islamic Bank shall carry out a comprehensive assessment to arrive at estimated profit and loss based on market rates, from operations which are financed by mudarabah funds and which have not reached the stage of final settlement by the end of the financial year.

SECTION 36. Sharing Between the Bank and the Investors. — Not later than the end of the first month of each financial year, the Board of Directors shall determine and publish the general percentages of profit to be allocated to the total funds participating in joint investments of the Islamic Bank.

The Islamic Bank as a joint venturer (mudarib) shall be entitled to certain percentage after deducting the amount allotted to investors. The Bank shall likewise be entitled to a share in the profits of joint investments in proportion to its own invested funds.

For the purpose of calculating funds employed in financing operations priority shall be given to joint investment accounts and the holders of muquaradah bonds.

All zakat due the shareholder's capital and reserves represented by the pecuniary value of shares and the zakat due on the investor's funds or profits accruing to every depositor shall be paid to the zakat fund, subject to their instructions.

SECTION 37. Tax Exemption. — The Islamic Bank assets, profits distributions and all contracts, deeds documents and transactions related to the conduct of business of the Islamic Bank shall be exempted from all taxes under the National Internal Revenue Code to commence from the first taxable year, following its actual Islamic banking operation as certified by the Central Bank, to the extent as herein made allowable:

(1) One hundred per centum (100%) for the first five (5) years; and

(2) Seventy-five per centum (75%) for the sixth through the eight year: provided, however, that said exemption shall apply only to such taxes, fees, charges and assessments for which the Islamic Bank would otherwise be liable, and shall not apply to the taxes, fees, charges or assessments payable by persons or other entities doing business with the Islamic Bank.

An investment in Islamic banking business to the extent of actual participation in profit and loss sharing scheme, paid in cash or property, shall be granted an exemption from all

taxes under the National Internal Revenue Code, except income tax: provided, that an investment tax allowance shall be permitted as a deduction from taxable income under such transactions to the extent that the Islamic Bank pays out zakat on the income of investors capital and surplus reserves for the duration of the joint investment period.

SECTION 38. Exemption from Customs Duties. — Within the first five (5) years of operation of the Islamic Bank, all importations by the Bank of machinery, equipment, calculators and computers and accompanying spare parts, as may be necessary for its operation, shall be exempted from customs duties and compensating taxes payable thereon: provided, however, that same shall not be disposed of domestically unless payment is made of all duties thereof at the tariff rates and according to their condition at the time of disposal and upon compliance with all import and exchange procedures.

SECTION 39. Non-Applicability of Selected Acts. — In order to achieve the international and domestic objectives of Islamic banking business, the provisions of the following acts and laws shall not apply to the Islamic Bank to the extent as herein rendered inoperative:

(1) The provisions of the Central Bank Act and the General Banking Act with particular reference to the determination of bank interest rates, loans and discounts, and any interest-bearing instruments or charge: provided, that nothing contained herein shall be construed to impair the powers of the Central Bank to supervise and regulate the activities of the Islamic Bank;

(2) The General Auditing Act and any other enactments thereon inconsistent with this Act; and

(3) The provision of Republic Act Numbered Three thousand five hundred ninety-one, as amended, and all laws, regulating insurance companies: provided, however, that nothing contained herein shall preclude the Islamic Bank from the establishment of contemporary Islamic tafakul (solidarity services) free of riba premiums or interests.

SECTION 40. Employment of Foreign Nationals. — Subject to the provisions of Section 29 of Commonwealth Act No. 613, and the Anti-Dummy Law, as amended, the Islamic Bank may employ foreign nationals in supervisory, technical or advisory positions for a period not exceeding five (5) years extendible for limited periods upon the recommendation of the Governor of the Central Bank.

Foreign nationals under employment contract within the purview of this Act, their spouses and unmarried children under twenty-one (21) years of age, who are not excluded by Section 29 of Commonwealth Act No. 613, shall be permitted to enter and reside in the Philippines during the period of employment of such foreign nationals.

SECTION 41. Training of Technical Personnel. — The Islamic Bank shall promote and sponsor the training of technical personnel in the field of Islamic banking, finance and insurance. Towards this end, the Islamic Bank is hereby authorized to defray the costs of study, at home or abroad of outstanding employees of the Islamic Bank, of promising university graduates or of any other qualified persons who shall be determined by proper competitive examinations. The Board of Directors shall prescribe rules and regulations to govern the training program of the Islamic Bank.

LEGAL EXISTENCE

SECTION 42. Terms of Legal Existence. — The legal existence of the Islamic Bank shall be for a period of fifty (50) years, from and after the date of the approval of this Act, renewable upon resolution of the general shareholders meeting called for said purpose.

At the expiration of the Islamic Bank's corporate existence or in the event of its dissolution before this date, the general shareholders meeting shall, upon the request of the Board of Directors, define the method of dissolution as provided for in its bylaws.

GENERAL PROVISIONS

SECTION 43. Application of the Islamic Shari'a. — The Monetary Board of the Central Bank of the Philippines shall formulate the necessary rules and regulations to carry out the provisions of this Charter for the purpose of providing adequate credit facilities primarily to the people of the Autonomous Region, and supervise the operation of the Islamic Bank in accordance with the universal principle of the Islamic Shari'a.

SECTION 44. Definition of Terms. — For the purposes of this Act, the following definition of terms is hereby adopted:

(1) Islamic Bank means the bank created under this Act;

(2) Islamic banking business means banking business whose aims and operations do not involve interest (riba) which is prohibited by the Islamic Shari'a principles;

(3) Shari'a has the meaning assigned to it by Islamic law and jurisprudence as expounded by authoritative sources; in the context of this Act, it is construed by reference to pertinent Quranic ordinances and applicable rules in Islamic jurisprudence on business transactions;

(4) Riba has the meaning assigned to it by Islamic law and jurisprudence as expounded by authoritative sources; in the context of banking activities, the term includes the receipt and payment of interest in the various types of lending and borrowing and in the exchange of currencies on forward basis;

(5) Zakat has the meaning assigned to it by Islamic law and jurisprudence as expounded by authoritative sources; in the context of this Act, it represents an annual "tithe" payable by the Bank on behalf of its shareholders and investors in compliance with Islamic Shari'a principles;

(6) Depositor means a person or entity that has an account at an Islamic Bank, whether the account is a current account, a savings account, an investment account or any other deposit account; unless the context requires another meaning, a depositor corresponds to an investor in joint investment of the Islamic Bank;

(7) Current account liabilities in relation to Islamic banking services means the total deposits at the bank which are repayable on demand;

(8) Savings account liabilities in relation to Islamic banking services means the total deposits at the Islamic Bank which normally require the presentation of passbooks or such other legally acceptable documents in lieu of passbooks as approved by the Central Bank for deposit or withdrawal of money;

(9) Investment account liabilities in relation to Islamic banking services means the total deposit liabilities at the Islamic Bank in respect of funds placed by a depositor with that bank for a fixed period of time under an agreement to share the profits and losses of that bank on the investment of such funds;

(10) Other deposit liabilities in relation to an Islamic Bank means the deposit liabilities at that bank other than savings account, investment account, current account liabilities and deposit liabilities from any Islamic Bank or any other licensed bank;

(11) Participation in relation to Islamic banking and commercial operations means any agreement or arrangement under which the mode of joint investments or specific transactions shall not involve the element of interest charge other than as percentage share in profits and losses of business;

(12) Share means share in the capital of the Bank or a corporation and includes a stock, except where a distinction between stock and share is expressed or implied.

PENALTIES

SECTION 45. Penalties for Violation. — Any director, officer, employee, auditor, or agent of the Islamic Bank who violates or permits the violation of any provision of this Act shall be punished by a fine not exceeding Ten thousand pesos (P10,000.00) or an imprisonment of not more than five (5) years, or both at the discretion of the court.

TRANSITORY AND MISCELLANEOUS PROVISIONS

SECTION 46. Supervision and Regulation by the Central Bank. — The Islamic Bank shall be under the supervision and regulation of the Central Bank. All provisions of this Act, except those which pertain to the principles of Islamic Shari'a, shall be subject to all banking and pertinent laws of the Philippines and Central Bank Rules and Regulations which shall include proper safeguards to depositors and investors in the investments, partnerships, agencies and other operation of the bank.

SECTION 47. Privatization. — Nothing in this Act shall be construed to preclude the Islamic Bank from privatizing its ownership. For this purpose, any limitation on the transfer of shares shall not be applicable with respect to the shareholdings of the National Government, Social Security System, Government Service Insurance System, Philippine National Bank and Development Bank of the Philippines.

SECTION 48. Transformation to Islamic Banking Business. — Upon approval of this Act, all the assets, liabilities and capital accounts of the Philippine Amanah Bank are hereby transferred to the Al-Amanah Islamic Investment Bank.

Nothing in this Act be construed to preclude the Islamic Bank from transforming its investment portfolios, accounts or assets for the conduct of Islamic banking business.if,

for any reason, such portfolios, accounts or assets granted under the authority of the Philippine Amanah Bank Charter are not eligible for this purpose, the same may be transferred, swapped, sold or otherwise disposed of in any manner deemed feasible following the effectivity of this Act.

SECTION 49. Reorganization of the Bank. — The Islamic Bank shall commence its reorganization within six (6) months from the date this Act takes effect. The present personnel complement of the Philippine Amanah Bank shall in the interim continue to discharge their respective functions. Officials and personnel whose services may be dispensed with as a result of this reorganization shall be paid the usual gratuities to which they may be entitled under the existing laws.

SECTION 50. Statutory Articles of Incorporation. — This Act, upon its effectivity, shall be deemed accepted for all legal intents and purposes as the Statutory Articles of Incorporation of the Al-Amanah Islamic Investments Bank of the Philippines; and that notwithstanding the provisions of any existing law to the contrary, said Islamic Bank shall be deemed registered and duly authorized to do business and operate as an Islamic Bank as of the date of approval of this Act.

SECTION 51. By-laws. — Within sixty (60) days upon effectivity of this Act, the by-laws of the Islamic Bank for its organizational, functional and operational government and procedure shall be adopted by affirmative vote at the general shareholders meeting representing a majority of all subscribed capital stock entitled to vote, whether paid or unpaid, subject to certification by the Monetary Board pursuant to Section Ten of the General Banking Act.

The by-laws, duly certified by the Monetary Board as aforesaid, shall be signed by the shareholders voting for them and shall be kept in the principal office of the Islamic Bank, subject to the inspection of the shareholders during office hours, and a copy thereof, duly certified by a majority of the directors and countersigned by the Corporate Secretary of the Islamic Bank, shall be filed and registered with the Securities and Exchange Commission.

SECTION 52. Repealing and Separability Clauses. — Presidential Decree No. 264, as amended by Presidential Decree No. 542, creating the Philippine Amanah Bank is hereby repealed.

All acts, executive orders, administrative orders, proclamations, rules and regulations or parts thereof inconsistent with any of the provisions of this Act are hereby repealed or modified accordingly.

If any provision or section of this Act or the application thereof to any person, association or circumstances is held invalid, the other pertinent provisions or section of this Act and their application to such person, association or circumstances shall not be affected thereby.

SECTION 53. Effectivity. — This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved: January 26, 1990

ANNEX B
Charter of the new Central Bank

REPUBLIC ACT NO. 7653

Chapter 1 — Establishment and organization of the Bangko Sentral ng Pilipinas

Article I
creation, responsibilities and corporate powers of the Bangko Sentral

Section 1. *Declaration of policy.* - the state shall maintain a central monetary authority that shall function and operate as an independent and accountable body corporate in the discharge of its mandated responsibilities concerning money, banking and credit. in line with this policy, and considering its unique functions and responsibilities, the central monetary authority established under this act, while being a government-owned corporation, shall enjoy fiscal and administrative autonomy.

Section 2. *creation of the Bangko Sentral.* - there is hereby established an independent central monetary authority, which shall be a body corporate known as the bangko sentral ng pilipinas, hereafter referred to as the bangko sentral.

The capital of the bangko Sentral shall be fifty billion pesos (p50, 000,000,000), to be fully subscribed by the government of the republic, hereafter referred to as the government, ten billion pesos (p10, 000,000,000) of which shall be fully paid for by the government upon the effectivity of this act and the balance to be paid for within a period of two (2) years from the effectivity of this act in such manner and form as the government, through the secretary of finance and the secretary of budget and management, may thereafter determine.

Section 3. *Responsibility and primary objective.* - the bangko sentral shall provide policy directions in the areas of money, banking, and credit. it shall have supervision over the operations of banks and exercise such regulatory powers as provided in this act and other pertinent laws over the operations of finance companies and non-bank financial institutions performing quasi-banking functions, hereafter referred to as quasi-banks, and institutions performing similar functions.

The primary objective of the bangko Sentral is to maintain price stability conducive to a balanced and sustainable growth of the economy. It shall also promote and maintain monetary stability and the convertibility of the peso.

Section 4. *Place of business.* - The bangko Sentral shall have its principal place of business in metro manila, but may maintain branches, agencies and correspondents in such other places as the proper conduct of its business may require.

Section 5. *Corporate powers.* -The bangko Sentral is hereby authorized to adopt,

alter, and use a corporate seal which shall be judicially noticed; to enter into contracts; to lease or own real and personal property, and to sell or otherwise dispose of the same; to sue and be sued; and otherwise to do and perform any and all things that may be necessary or proper to carry out the purposes of this act.

Article ii
the monetary board

Section 6. *Composition of the monetary board.* -The powers and functions of the bangko Sentral shall be exercised by the bangko Sentral monetary board hereafter referred to as the monetary board, composed of seven (7) members appointed by the president of the Philippines for a term of six (6) years.

The seven (7) members are:

1 (a) The governor of the bangko Sentral, who shall be the chairman of the monetary board. The governor of the bangko Sentral shall be head of a department and his appointment shall be subject to confirmation by the commission on appointments. Whenever the governor is unable to attend a meeting of the board, he shall designate a deputy governor to act as his alternate: provided, that in such event, the monetary board shall designate one of its members as acting chairman;

2

3 (b) a member of the cabinet to be designated by the president of the Philippines. whenever the designated cabinet member is unable to attend a meeting of the board, he shall designate an undersecretary in his department to attend as his alternate; and

4

5 (c) five (5) members who shall come from the private sector, all of whom shall serve full-time: provided, however, that of the members first appointed under the provisions of this subsection, three (3) shall have a term of six (6) years, and the other two (2), three (3) years.

No member of the monetary board may be reappointed more than once.

Section 7. *Vacancies.* - Any vacancy in the monetary board created by the death, resignation, or removal of any member shall be filled by the appointment of a new member to complete the unexposed period of the term of the member concerned.

Section 8. *qualifications.* -The members of the monetary board must be natural-born citizens of the Philippines, at least thirty-five (35) years of age, with the exception of the governor who should at least be forty (40) years of age, of good moral character, of unquestionable integrity, of known probity and patriotism, and with recognized competence in social and economic disciplines.

Section 9. *Disqualifications.* - In addition to the disqualifications imposed by republic act no. 6713, a member of the monetary board is disqualified from being a director, officer,

employee, consultant, lawyer, agent or stockholder of any bank, quasi-bank or any other institution which is subject to supervision or examination by the bangko Sentral, in which case such member shall resign from, and divest himself of any and all interests in such institution before assumption of office as member of the monetary board.

The members of the monetary board coming from the private sector shall not hold any other public office or public employment during their tenure.

No person shall be a member of the monetary board if he has been connected directly with any multilateral banking or financial institution or has a substantial interest in any private bank in the Philippines, within one (1) year prior to his appointment; likewise, no member of the monetary board shall be employed in any such institution within two (2) years after the expiration of his term except when he serves as an official representative of the Philippine government to such institution.

Section 10. *Removal.* -The president may remove any member of the monetary board for any of the following reasons:

1 **(a) If the member is subsequently disqualified under the provisions of section 8 of this act; or**

0 **(b) If he is physically or mentally incapacitated that he cannot properly discharge his duties and responsibilities and such incapacity has lasted for more than six (6) months; or**

2 **(c) If the member is guilty of acts or operations which are of fraudulent or illegal character or which are manifestly opposed to the aims and interests of the bangko Sentral; or**

(d) If the member no longer possesses the qualifications specified in section 8 of this act.

Section 11. *Meetings.* - The monetary board shall meet at least once a week. The board may be called to a meeting by the governor of the bangko Sentral or by two (2) other members of the board.

The presence of four (4) members shall constitute a quorum: provided, that in all cases the governor or his duly designated alternate shall be among the four (4).

Unless otherwise provided in this act, all decisions of the monetary board shall require the concurrence of at least four (4) members.

The bangko Sentral shall maintain and preserve a complete record of the proceedings and deliberations of the monetary board, including the tapes and transcripts of the stenographic notes, either in their original form or in microfilm.

Section 12. *Attendance of the deputy governors.* -the deputy governors may attend the meetings of the monetary board with the right to be heard.

section 13. *salary.* - the salary of the governor and the members of the monetary board from the private sector shall be fixed by the president of the philippines at a sum commensurate to the importance and responsibility attached to the position.

section 14. ***withdrawal of persons having a personal interest.*** **-in addition to the requirements of republic act no. 6713, any member of the monetary board with personal or pecuniary interest in any matter in the agenda of the monetary board shall disclose his interest to the board and shall retire from the meeting when the matter is taken up. the decision taken on the matter shall be made public. the minutes shall reflect the disclosure made and the retirement of the member concerned from the meeting.**

section 15. ***exercise of authority.*** **- in the exercise of its authority, the monetary board shall:**

1 (a) issue rules and regulations it considers necessary for the effective discharge of the responsibilities and exercise of the powers vested upon the monetary board and the bangko sentral. the rules and regulations issued shall be reported to the president and the congress within fifteen (15) days from the date of their issuance;
2 (b) direct the management, operations, and administration of the bangko sentral, reorganize its personnel, and issue such rules and regulations as it may deem necessary or convenient for this purpose. the legal units of the bangko sentral shall be under the exclusive supervision and control of the monetary board;
3 (c) establish a human resource management system which shall govern the selection, hiring, appointment, transfer, promotion, or dismissal of all personnel. such system shall aim to establish professionalism and excellence at all levels of the bangko sentral in accordance with sound principles of management. a compensation structure, based on job evaluation studies and wage surveys and subject to the board's approval, shall be instituted as an integral component of the bangko sentral's human resource development program: provided, that the monetary board shall make its own system conform as closely as possible with the principles provided for under republic act no. 6758: provided, however, that compensation and wage structure of employees whose positions fall under salary grade 19 and below shall be in accordance with the rates prescribed under republic act no. 6758. on the recommendation of the governor, appoint, fix the remunerations and other emoluments, and remove personnel of the bangko sentral, subject to pertinent civil service laws: provided, that the monetary board shall have exclusive and final authority to promote, transfer, assign, or reassign personnel of the bangko sentral and these personnel actions are deemed made in the interest of the service and not disciplinary: provided, further, that the monetary board may delegate such authority to the governor under such guidelines as it may determine.
1 (d) adopt an annual budget for and authorize such expenditures by the bangko sentral as are in the interest of the effective administration and operations of the bangko sentral in accordance with applicable laws and regulations; and
2 (e) indemnify its members and other officials of the bangko sentral, including personnel of the departments performing supervision and examination functions against all costs and expenses reasonably incurred by such persons in connection with any civil or criminal action, suit or proceedings to which he may be, or is, made a party by reason of the performance of his functions or duties, unless he is finally adjudged in such action or proceeding to be liable for negligence or misconduct.
3
4 in the event of a settlement or compromise, indemnification shall be provided only in connection with such matters covered by the settlement as to which the bangko sentral is

advised by external counsel that the person to be indemnified did not commit any negligence or misconduct.

5 the costs and expenses incurred in defending the aforementioned action, suit or proceeding may be paid by the bangko sentral in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the member, officer, or employee to repay the amount advanced should it ultimately be determined by the monetary board that he is not entitled to be indemnified as provided in this subsection.

section 16. *responsibility.* - members of the monetary board, officials, examiners, and employees of the bangko sentral who willfully violate this act or who are guilty of negligence, abuses or acts of malfeasance or misfeasance or fail to exercise extraordinary diligence in the performance of his duties shall be held liable for any loss or injury suffered by the bangko sentral or other banking institutions as a result of such violation, negligence, abuse, malfeasance, misfeasance or failure to exercise extraordinary diligence.

similar responsibility shall apply to members, officers, and employees of the bangko sentral for: (1) the disclosure of any information of a confidential nature, or any information on the discussions or resolutions of the monetary board, or about the confidential operations of the bangko sentral, unless the disclosure is in connection with the performance of official functions with the bangko sentral, or is with prior authorization of the monetary board or the governor; or (2) the use of such information for personal gain or to the detriment of the government, the bangko sentral or third parties: provided, however, that any data or information required to be submitted to the president and/or the congress, or to be published under the provisions of this act shall not be considered confidential.

article iii
the governor and deputy governors of the bangko sentral

section 17. *powers and duties of the governor.* - the governor shall be the chief executive officer of the bangko sentral. his powers and duties shall be to:

1 (a) prepare the agenda for the meetings of the monetary board and to submit for the consideration of the board the policies and measures which he believes to be necessary to carry out the purposes and provisions of this act;
2 (b) execute and administer the policies and measures approved by the monetary board;
3 (c) direct and supervise the operations and internal administration of the bangko sentral. the governor may delegate certain of his administrative responsibilities to other officers or may assign specific tasks or responsibilities to any full-time member of the monetary board without additional remuneration or allowance whenever he may deem fit or subject to such rules and regulations as the monetary board may prescribe;
4 (d) appoint and fix the remunerations and other emoluments of personnel below the rank of a department head in accordance with the position and compensation plans approved by the monetary board, as well as to impose disciplinary measures upon personnel of the bangko sentral, subject to the provisions of section 15(c) of this act:

provided, that removal of personnel shall be with the approval of the monetary board;
1 (e) render opinions, decisions, or rulings, which shall be final and executory until reversed or modified by the monetary board, on matters regarding application or enforcement of laws pertaining to institutions supervised by the bangko sentral and laws pertaining to quasi-banks, as well as regulations, policies or instructions issued by the monetary board, and the implementation thereof; and
2 (f) exercise such other powers as may be vested in him by the monetary board.

section 18. ***representation of the monetary board and the bangko sentral.*** **- the governor of the bangko sentral shall be the principal representative of the monetary board and of the bangko sentral and, in such capacity and in accordance with the instructions of the monetary board, he shall be empowered to:**

1 (a) represent the monetary board and the bangko sentral in all dealings with other offices, agencies and instrumentalities of the government and all other persons or entities, public or private, whether domestic, foreign or international;
0 (b) sign contracts entered into by the bangko sentral, notes and securities issued by the bangko sentral, all reports, balance sheets, profit and loss statements, correspondence and other documents of the bangko sentral.
1 the signature of the governor may be in facsimile whenever appropriate;
2 (c) represent the bangko sentral, either personally or through counsel, including private counsel, as may be authorized by the monetary board, in any legal proceedings, action or specialized legal studies; and
3 (d) delegate his power to represent the bangko sentral, as provided in subsections (a), (b) and
4 (c) of this section, to other officers upon his own responsibility: provided, however, that in order to preserve the integrity and the prestige of his office, the governor of the bangko sentral may choose not to participate in preliminary discussions with any multilateral banking or financial institution on any negotiations for the government within or outside the philippines. during the negotiations, he may instead be represented by a permanent negotiator.

section 19. ***authority of the governor in emergencies.*** **- in case of emergencies where time is sufficient to call a meeting of the monetary board, the governor of the bangko sentral, with the concurrence of two (2) other members of the monetary board, may decide any matter or take any action within the authority of the board.**

the governor shall submit a report to the president and congress within seventy-two (72) hours after the action has been taken.

at the soonest possible time, the governor shall call a meeting of the monetary board to submit his action for ratification.

section 20. ***outside interests of the governor and the full-time members of the board.*** **- the governor of the bangko sentral and the full-time members of the board shall limit their professional activities to those pertaining directly to their positions with the bangko sentral. accordingly, they may not accept any other employment, whether public or private, remunerated or ad honorem, with the exception of positions in eleemosynary, civic, cultural or religious organizations or whenever, by designation of the president, the governor or the full-time member is tasked to represent the interest of the government or other government agencies in matters connected with or affecting the economy or the**

financial system of the country.

section 21. *deputy governors.* - the governor of the bangko sentral, with the approval of the monetary board, shall appoint not more than three (3) deputy governors who shall perform duties as may be assigned to them by the governor and the board.

in the absence of the governor, a deputy governor designated by the governor shall act as chief executive of the bangko sentral and shall exercise the powers and perform the duties of the governor. whenever the government is unable to attend meetings of government boards or councils in which he is an ex officio member pursuant to provisions of special laws, a deputy governor as may be designated by the governor shall be vested with authority to participate and exercise the right to vote in such meetings.

article iv
operations of the bangko sentral

section 22. *research and statistics.* - the bangko sentral shall prepare data and conduct economic research for the guidance of the monetary board in the formulation and implementation of its policies. such data shall include, among others, forecasts of the balance of payments of the philippines, statistics on the monthly movement of the monetary aggregates and of prices and other statistical series and economic studies useful for the formulation and analysis of monetary, banking, credit and exchange policies.

section 23. *authority to obtain data and information.* - the bangko sentral shall have the authority to request from government offices and instrumentalities, or government-owned or controlled corporations, any data which it may require for the proper discharge of its functions and responsibilities. the bangko sentral through the governor or in his absence, a duly authorized representative shall have the power to issue a subpoena for the production of the books and records for the aforesaid purpose. those who refuse the subpoena without justifiable cause, or who refuse to supply the bank with data requested or required, shall be subject to punishment for contempt in accordance with the provisions of the rules of court.

data on individual firms, other than banks, gathered by the department of economic research and other departments or units of the bangko sentral shall not be made available to any person or entity outside of the bangko sentral whether public or private except under order of the court or under such conditions as may be prescribed by the monetary board: provided, however, that the collective data on firms may be released to interested persons or entities: provided, finally, that in the case of data on banks, the provisions of section 27 of this act shall apply.

section 24. *training of technical personnel.* - the bangko sentral shall promote and sponsor the training of technical personnel in the field of money and banking. toward this end, the bangko sentral is hereby authorized to defray the costs of study, at home or abroad, of qualified employees of the bangko sentral, of promising university graduates or of any other qualified persons who shall be determined by proper competitive examinations. the monetary board shall prescribe rules and regulations to govern the training program of the bangko sentral.

section 25. ***supervision and examination.*** **- the bangko sentral shall have supervision over, and conduct periodic or special examinations of, banking institutions and quasi-banks, including their subsidiaries and affiliates engaged in allied activities.**

for purposes of this section, a subsidiary means a corporation more than fifty percent (50%) of the voting stock of which is owned by a bank or quasi-bank and an affiliate means a corporation the voting stock of which, to the extent of fifty percent (50%) or less, is owned by a bank or quasi-bank or which is related or linked to such institution or intermediary through common stockholders or such other factors as may be determined by the monetary board.

the department heads and the examiners of the supervising and/or examining departments are hereby authorized to administer oaths to any director, officer, or employee of any institution under their respective supervision or subject to their examination and to compel the presentation of all books, documents, papers or records necessary in their judgment to ascertain the facts relative to the true condition of any institution as well as the books and records of persons and entities relative to or in connection with the operations, activities or transactions of the institution under examination, subject to the provision of existing laws protecting or safeguarding the secrecy or confidentiality of bank deposits as well as investments of private persons, natural or juridical, in debt instruments issued by the government.

no restraining order or injunction shall be issued by the court enjoining the bangko sentral from examining any institution subject to supervision or examination by the bangko sentral, unless there is convincing proof that the action of the bangko sentral is plainly arbitrary and made in bad faith and the petitioner or plaintiff files with the clerk or judge of the court in which the action is pending a bond executed in favor of the bangko sentral, in an amount to be fixed by the court. the provisions of rule 58 of the new rules of court insofar as they are applicable and not inconsistent with the provisions of this section shall govern the issuance and dissolution of the restraining order or injunction contemplated in this section.

section 26. ***bank deposits and investments.*** **- any director, officer or stockholder who, together with his related interest, contracts a loan or any form of financial accommodation from: (1) his bank; or (2) from a bank (a) which is a subsidiary of a bank holding company of which both his bank and the lending bank are subsidiaries or (b) in which a controlling proportion of the shares is owned by the same interest that owns a controlling proportion of the shares of his bank, in excess of five percent (5%) of the capital and surplus of the bank, or in the maximum amount permitted by law, whichever is lower, shall be required by the lending bank to waive the secrecy of his deposits of whatever nature in all banks in the philippines. any information obtained from an examination of his deposits shall be held strictly confidential and may be used by the examiners only in connection with their supervisory and examination responsibility or by the bangko sentral in an appropriate legal action it has initiated involving the deposit account.**

section 27. ***prohibitions.*** **- in addition to the prohibitions found in republic act nos. 3019 and 6713, personnel of the bangko sentral are hereby prohibited from:**

1 (a) being an officer, director, lawyer or agent, employee, consultant or stockholder,

directly or indirectly, of any institution subject to supervision or examination by the bangko sentral, except non-stock savings and loan associations and provident funds organized exclusively for employees of the bangko sentral, and except as otherwise provided in this act;

2 (b) directly or indirectly requesting or receiving any gift, present or pecuniary or material benefit for himself or another, from any institution subject to supervision or examination by the bangko sentral;

3 (c) revealing in any manner, except under orders of the court, the congress or any government office or agency authorized by law, or under such conditions as may be prescribed by the monetary board, information relating to the condition or business of any institution. this prohibition shall not be held to apply to the giving of information to the monetary board or the governor of the bangko sentral, or to any person authorized by either of them, in writing, to receive such information; and

4 (d) borrowing from any institution subject to supervision or examination by the bangko sentral shall be prohibited unless said borrowings are adequately secured, fully disclosed to the monetary board, and shall be subject to such further rules and regulations as the monetary board may prescribe: provided, however, that personnel of the supervising and examining departments are prohibited from borrowing from a bank under their supervision or examination.

section 28. *examination and fees.* - the supervising and examining department head, personally or by deputy, shall examine the books of every banking institution once in every twelve
(12) months, and at such other times as the monetary board by an affirmative vote of five (5) members, may deem expedient and to make a report on the same to the monetary board: provided, that there shall be an interval of at least twelve (12) months between annual examinations.

the bank concerned shall afford to the head of the appropriate supervising and examining departments and to his authorized deputies full opportunity to examine its books, cash and available assets and general condition at any time during banking hours when requested to do so by the bangko sentral: provided, however, that none of the reports and other papers relative to such examinations shall be open to inspection by the public except insofar as such publicity is incidental to the proceedings hereinafter authorized or is necessary for the prosecution of violations in connection with the business of such institutions.

banking and quasi-banking institutions which are subject to examination by the bangko sentral shall pay to the bangko sentral, within the first thirty (30) days of each year, an annual fee in an amount equal to a percentage as may be prescribed by the monetary board of its average total assets during the preceding year as shown on its end-of-month balance sheets, after deducting cash on hand and amounts due from banks, including the bangko sentral and banks abroad.

section 29. *appointment of conservator.* -whenever, on the basis of a report submitted by the appropriate supervising or examining department, the monetary board finds that a bank or a quasi-bank is in a state of continuing inability or unwillingness to maintain a condition of liquidity deemed adequate to protect the interest of depositors and creditors, the monetary board may appoint a conservator with such powers as the monetary board shall deem necessary to take charge of the assets, liabilities, and the management thereof, reorganize the management, collect all monies and debts due said

institution, and exercise all powers necessary to restore its viability. the conservator shall report and be responsible to the monetary board and shall have the power to overrule or revoke the actions of the previous management and board of directors of the bank or quasi-bank.

the conservator should be competent and knowledgeable in bank operations and management. the conservatorship shall not exceed one (1) year.

the conservator shall receive remuneration to be fixed by the monetary board in an amount not to exceed two-thirds (2/3) of the salary of the president of the institution in one (1) year, payable in twelve (12) equal monthly payments: provided, that, if at any time within one-year period, the conservatorship is terminated on the ground that the institution can operate on its own, the conservator shall receive the balance of the remuneration which he would have received up to the end of the year; but if the conservatorship is terminated on other grounds, the conservator shall not be entitled to such remaining balance. the monetary board may appoint a conservator connected with the bangko sentral, in which case he shall not be entitled to receive any remuneration or emolument from the bangko sentral during the conservatorship. the expenses attendant to the conservatorship shall be borne by the bank or quasi-bank concerned.

the monetary board shall terminate the conservatorship when it is satisfied that the institution can continue to operate on its own and the conservatorship is no longer necessary. the conservatorship shall likewise be terminated should the monetary board, on the basis of the report of the conservator or of its own findings, determine that the continuance in business of the institution would involve probable loss to its depositors or creditors, in which case the provisions of section 30 shall apply.

section 30. *proceedings in receivership and liquidation.* - whenever, upon report of the head of the supervising or examining department, the monetary board finds that a bank or quasi-bank:

1 (a) is unable to pay its liabilities as they become due in the ordinary course of business: provided, that this shall not include inability to pay caused by extraordinary demands induced by financial panic in the banking community;
2 (b) has insufficient realizable assets, as determined by the bangko sentral, to meet its liabilities; or
3 (c) cannot continue in business without involving probable losses to its depositors or creditors; or
4 (d) has willfully violated a cease and desist order under section 37 that has become final, involving acts or transactions which amount to fraud or a dissipation of the assets of the institution; in which cases, the monetary board may summarily and without need for prior hearing forbid the institution from doing business in the philippines and designate the philippine deposit insurance corporation as receiver of the banking institution.

for a quasi-bank, any person of recognized competence in banking or finance may be designed as receiver.

the receiver shall immediately gather and take charge of all the assets and liabilities of the institution, administer the same for the benefit of its creditors, and exercise the general powers of a receiver under the revised rules of court but shall not, with the exception of administrative expenditures, pay or commit any act that will involve the

transfer or disposition of any asset of the institution: provided, that the receiver may deposit or place the funds of the institution in non-speculative investments. the receiver shall determine as soon as possible, but not later than ninety (90) days from take over, whether the institution may be rehabilitated or otherwise placed in such a condition so that it may be permitted to resume business with safety to its depositors and creditors and the general public: provided, that any determination for the resumption of business of the institution shall be subject to prior approval of the monetary board.

if the receiver determines that the institution cannot be rehabilitated or permitted to resume business in accordance with the next preceding paragraph, the monetary board shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution. the receiver shall:

1 (1) file ex parte with the proper regional trial court, and without requirement of prior notice or any other action, a petition for assistance in the liquidation of the institution pursuant to a liquidation plan adopted by the philippine deposit insurance corporation for general application to all closed banks. in case of quasi-banks, the liquidation plan shall be adopted by the monetary board. upon acquiring jurisdiction, the court shall, upon motion by the receiver after due notice, adjudicate disputed claims against the institution, assist the enforcement of individual liabilities of the stockholders, directors and officers, and decide on other issues as may be material to implement the liquidation plan adopted. the receiver shall pay the cost of the proceedings from the assets of the institution.
2 (2) convert the assets of the institutions to money, dispose of the same to creditors and other parties, for the purpose of paying the debts of such institution in accordance with the rules on concurrence and preference of credit under the civil code of the philippines and he may, in the name of the institution, and with the assistance of counsel as he may retain, institute such actions as may be necessary to collect and recover accounts and assets of, or defend any action against, the institution. the assets of an institution under receivership or liquidation shall be deemed in custodia legis in the hands of the receiver and shall, from the moment the institution was placed under such receivership or liquidation, be exempt from any order of garnishment, levy, attachment, or execution.

the actions of the monetary board taken under this section or under section 29 of this act shall be final and executory, and may not be restrained or set aside by the court except on petition for certiorari on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. the petition for certiorari may only be filed by the stockholders of record representing the majority of the capital stock within ten (10) days from receipt by the board of directors of the institution of the order directing receivership, liquidation or conservatorship.

the designation of a conservator under section 29 of this act or the appointment of a receiver under this section shall be vested exclusively with the monetary board. furthermore, the designation of a conservator is not a precondition to the designation of a receiver.

section 31. *distribution of assets.* - in case of liquidation of a bank or quasi-bank, after payment of the cost of proceedings, including reasonable expenses and fees of the receiver to be allowed by the court, the receiver shall pay the debts of such institution, under order of the court, in accordance with the rules on concurrence and preference of

credit as provided in the civil code.

section 32. ***disposition of revenues and earnings.*** **- all revenues and earnings realized by the receiver in winding up the affairs and administering the assets of any bank or quasi-bank within the purview of this act shall be used to pay the costs, fees and expenses mentioned in the preceding section, salaries of such personnel whose employment is rendered necessary in the discharge of the liquidation together with other additional expenses caused thereby. the balance of revenues and earnings, after the payment of all said expenses, shall form part of the assets available for payment to creditors.**

section 33. ***disposition of banking franchise.*** **- the bangko sentral may, if public interest so requires, award to an institution, upon such terms and conditions as the monetary board may approve, the banking franchise of a bank under liquidation to operate in the area where said bank or its branches were previously operating: provided, that whatever proceeds may be realized from such award shall be subject to the appropriate exclusive disposition of the monetary board.**

section 34. ***refusal to make reports or permit examination.*** **- any officer, owner, agent, manager, director or officer-in-charge of any institution subject to the supervision or examination by the bangko sentral within the purview of this act who, being required in writing by the monetary board or by the head of the supervising and examining department willfully refuses to file the required report or permit any lawful examination into the affairs of such institution shall be punished by a fine of not less than fifty thousand pesos (p50,000) nor more than one hundred thousand pesos (p100,000) or by imprisonment of not less than one (1) year nor more than five (5) years, or both, in the discretion of the court.**

section 35. ***false statement.*** **- the willful making of a false or misleading statement on a material fact to the monetary board or to the examiners of the bangko sentral shall be punished by a fine of not less than one hundred thousand pesos (p100, 000) nor more than two hundred thousand pesos (p200,000), or by imprisonment of not more than (5) years, or both, at the discretion of the court.**

section 36. ***proceedings upon violation of this act and other banking laws, rules, regulations, orders or instructions.*** **-whenever a bank or quasi-bank, or whenever any person or entity willfully violates this act or other pertinent banking laws being enforced or implemented by the bangko sentral or any order, instruction, rule or regulation issued by the monetary board, the person or persons responsible for such violation shall unless otherwise provided in this act be punished by a fine of not less than fifty thousand pesos (p50,000) nor more than two hundred thousand pesos (p200,000) or by imprisonment of not less than two (2) years nor more than ten (10) years, or both, at the discretion of the court.**

whenever a bank or quasi-bank persists in carrying on its business in an

unlawful or unsafe manner, the board may, without prejudice to the penalties provided in the preceding paragraph of this section and the administrative sanctions provided in section 37 of this act, take action under section 30 of this act.

section 37. ***administrative sanctions on banks and quasi-banks.*** **-without prejudice to the criminal sanctions against the culpable persons provided in sections 34, 35, and 36**

of this act, the monetary board may, at its discretion, impose upon any bank or quasi-bank, their directors and/or officers, for any willful violation of its charter or by-laws, willful delay in the submission of reports or publications thereof as required by law, rules and regulations; any refusal to permit examination into the affairs of the institution; any willful making of a false or misleading statement to the board or the appropriate supervising and examining department or its examiners; any willful failure or refusal to comply with, or violation of, any banking law or any order, instruction or regulation issued by the monetary board, or any order, instruction or ruling by the governor; or any commission of irregularities, and/or conducting business in an unsafe or unsound manner as may be determined by the monetary board, the following administrative sanctions, whenever applicable:

1 (a) fines in amounts as may be determined by the monetary board to be appropriate, but in no case to exceed thirty thousand pesos (p30,000) a day for each violation, taking into consideration the attendant circumstances, such as the nature and gravity of the violation or irregularity and the size of the bank or quasi-bank;
2 (b) suspension of rediscounting privileges or access to bangko sentral credit facilities;
3 (c) suspension of lending or foreign exchange operations or authority to accept new deposits or make new investments;
1 (d) suspension of interbank clearing privileges; and/or
2 (e) revocation of quasi-banking license.

resignation or termination from office shall not exempt such director or officer from administrative or criminal sanctions.

the monetary board may, whenever warranted by circumstances, preventively suspend any director or officer of a bank or quasi-bank pending an investigation: provided, that should the case be not finally decided by the bangko sentral within a period of one hundred twenty (120) days after the date of suspension, said director or officer shall be reinstated in his position: provided, further, that when the delay in the disposition of the case is due to the fault, negligence or petition of the director or officer, the period of delay shall not be counted in computing the period of suspension herein provided.

the above administrative sanctions need not be applied in the order of their severity.

whether or not there is an administrative proceeding, if the institution and/or the directors and/or officers concerned continue with or otherwise persist in the commission of the indicated practice or violation, the monetary board may issue an order requiring the institution and/or the directors and/or officers concerned to cease and desist from the indicated practice or violation, and may further order that immediate action be taken to correct the conditions resulting from such practice or violation. the cease and desist order shall be immediately effective upon service on the respondents.

the respondents shall be afforded an opportunity to defend their action in a hearing before the monetary board or any committee chaired by any monetary board member created for the purpose, upon request made by the respondents within five (5) days from their receipt of the order. if no such hearing is requested within said period, the order shall be final. if a hearing is conducted, all issues shall be determined on the basis of records, after which the monetary board may either reconsider or make final its order.

the governor is hereby authorized, at his discretion, to impose upon banking institutions, for any failure to comply with the requirements of law, monetary board regulations and policies, and/or instructions issued by the monetary board or by the governor, fines not in excess of ten thousand pesos (p10,000) a day for each violation, the imposition of which shall be final and executory until reversed, modified or lifted by the monetary board on appeal.

section 38. *operating departments of the bangko sentral.* - the monetary board shall, in accordance with its authority under this act, determine and provide for such operating departments and other offices, including a public information office, of the bangko sentral as it deems convenient for the proper and efficient conduct of the operations and the accomplishment of the objectives of the bangko sentral. the functions and duties of such operating departments and other offices shall be determined by the monetary board.

article v
reports and publications

section 39. *reports and publications.* - the bangko sentral shall publish a general balance sheet showing the volume and composition of its assets and liabilities as of the last working day of the month within sixty (60) days after the end of each month except for the month of december, which shall be submitted within ninety (90) days after the end hereof.

the monetary board shall publish and submit the following reports to the president and to the congress:

0 (a) not later than ninety (90) days after the end of each quarter, an analysis of economic and financial developments, including the condition of net international reserves and monetary aggregates;
2 (b) within ninety (90) days after the end of the year, the preceding year's budget and profit and loss statement of the bangko sentral showing in reasonable detail the result of its operations;
3 (c) one hundred twenty (120) days after the end of each semester, a review of the state of the financial system; and
4 (d) as soon as practicable, abnormal movements in monetary aggregates and the general price level, and, not later than seventy-two (72) hours after they are taken, remedial measures in response to such abnormal movements.

section 40. *annual report.* -before the end of march of each year, the bangko sentral shall publish and submit to the president and the congress an annual report on the condition of the bangko sentral including a review of the policies and measures adopted by the monetary board during the past year and an analysis of the economic and financial circumstances which gave rise to said policies and measures.

the annual report shall also include a statement of the financial condition of the bangko sentral and a statistical appendix which shall present, as a minimum, the following data:

1 (a) the monthly movement of monetary aggregates and their components;
2 (b) the monthly movement of purchases and sales of foreign exchange and of the international reserves of the bangko sentral;
3 (c) the balance of payments of the philippines;
4 (d) monthly indices of consumer prices and of import and export prices;
5 (e) the monthly movement, in summary form, of exports and imports, by volume and value;
6 (f) the monthly movement of the accounts of the bangko sentral and of other banks;
7 (g) the principal data on government receipts and expenditures and on the status of the public debt, both domestic and foreign; and
8 (h) the texts of the major legal and administrative measures adopted by the government and the monetary board during the year which relate to the functions or operations of the bangko sentral or of the financial system.

the bangko sentral shall publish another version of the annual report in terms understandable to the layman.

failure to comply with the reportorial requirements pursuant to this article without justifiable reason as may be determined by the monetary board shall cause the withholding of the salary of the personnel concerned until the requirements are complied with.

section 41. *signatures on statements.* - the balance sheets and other financial statements of the bangko sentral shall be signed by the officers responsible for their preparation, by the governor, and by the auditor of the bangko sentral.

article vi
profits, losses, and special accounts

section 42. *fiscal year.* -the fiscal year of the bangko sentral shall begin on january first and end on december thirty-first of each year.

section 43. *computation of profits and losses.* - within the first thirty (30) days following the end of each year, the bangko sentral shall determine its net profits or losses. in the calculation of net profits, the bangko sentral shall make adequate allowance or establish adequate reserves for bad and doubtful accounts.
section 44. *distribution of net profits.* - within the first sixty (60) days following the end of each fiscal year, the monetary board shall determine and carry out the distribution of the net profits, in accordance with the following rule:

fifty percent (50%) of the net profits shall be carried to surplus and the remaining fifty percent (50%) shall revert back to the national treasury, except as otherwise provided in the transitory provisions of this act.

section 45. *revaluation profits and losses.* - profits or losses arising from any revaluation of the bangko sentral's net assets or liabilities in gold or foreign currencies with respect to the philippine peso shall not be included in the computation of the annual profits and losses of the bangko sentral. any profits or losses arising in this manner shall be offset by any amounts which, as a consequence of such revaluations, are owed by the philippines to any international or regional intergovernmental financial institution of which the philippines is a member or are owed by these institutions to the philippines. any

remaining profit or loss shall be carried in a special frozen account which shall be named "revaluation of international reserve" and the net balance of which shall appear either among the liabilities or among the assets of the bangko sentral, depending on whether the revaluations have produced net profits or net losses.

the revaluation of international reserve account shall be neither credited nor debited for any purposes other than those specifically authorized in this section.

section 46. *suspense accounts.* - sections 43 and 43-a of republic act no. 265, as amended, creating the monetary adjustment account (maa) and the exchange stabilization adjustment account (esaa), respectively, are hereby repealed. amounts outstanding as of the effective date of this act based on these accounts shall continue to be for the account of the central bank and shall be governed by the transitory provisions of this act.

the revaluation of international reserve (rir) account as of the effective date of this act of the central bank shall continue to be for the account of the same entity and shall be governed by the provisions of section 44 of republic act no. 265, as amended, until otherwise provided for in accordance with the transitory provisions of this act.

article vii
the auditor

section 47. *appointment and personnel.* - the chairman of the commission on audit shall act as the ex officio auditor of the bangko sentral and, as such, he is empowered and authorized to appoint a representative who shall be the auditor of the bangko sentral and, in accordance with law, fix his salary, and to appoint and fix salaries and number of personnel to assist said representative in his work. the salaries and other emoluments shall be paid by the commission. the auditor of the bangko sentral and personnel under him may be removed only by the chairman of the commission.

the representative of the chairman of the commission must be a certified public accountant with at least ten (10) years experience as such. no relative of any member of the monetary board or the chairman of the commission within the sixth degree of consanguinity or affinity shall be appointed such representative.

chapter ii — the bangko sentral and the means of payment

article i
the unit of monetary value

section 48. *the peso.* - the unit of monetary value in the philippines is the "peso," which is represented by the sign "p."

the peso is divided into one hundred (100) equal parts called "centavos," which are represented by the sign "c."

article ii

issue of means of payment

a. currency

section 49. ***definition of currency.*** **- the word "currency" is hereby defined, for purposes of this act, as meaning all philippine notes and coins issued or circulating in accordance with the provisions of this act.**

section 50. ***exclusive issue power.*** **- the bangko sentral shall have the sole power and authority to issue currency, within the territory of the philippines. no other person or entity, public or private, may put into circulation notes, coins or any other object or document which, in the opinion of the monetary board, might circulate as currency, nor reproduce or imitate the facsimiles of bangko sentral notes without prior authority from the bangko sentral.**

the monetary board may issue such regulations as it may deem advisable in order to prevent the circulation of foreign currency or of currency substitutes as well as to prevent the reproduction of facsimiles of bangko sentral notes.

the bangko sentral shall have the authority to investigate, make arrests, conduct searches and seizures in accordance with law, for the purpose of maintaining the integrity of the currency.

violation of this provision or any regulation issued by the bangko sentral pursuant thereto shall constitute an offense punishable by imprisonment of not less than five (5) years but not more than ten (10) years. in case the revised penal code provides for a greater penalty, then that penalty shall be imposed.

section 51. ***liability for notes and coins.*** **- notes and coins issued by the bangko sentral shall be liabilities of the bangko sentral and may be issued only against, and in amounts not exceeding, the assets of the bangko sentral. said notes and coins shall be a**

first and paramount lien on all assets of the bangko sentral.

the bangko sentral's holdings of its own notes and coins shall not be considered as part of its currency issue and, accordingly, shall not form part of the assets or liabilities of the bangko sentral.

section 52. ***legal tender power.*** **-all notes and coins issued by the bangko sentral shall be fully guaranteed by the government of the republic of the philippines and shall be legal tender in the philippines for all debts, both public and private: provided, however, that, unless otherwise fixed by the monetary board, coins shall be legal tender in amounts not exceeding fifty pesos (p50.00) for denominations of twenty-five centavos and above, and in amounts not exceeding twenty pesos (p20.00) for denominations of ten centavos or less.**

section 53. ***characteristics of the currency.*** **- the monetary board, with the approval of the president of the philippines, shall prescribe the denominations, dimensions, designs, inscriptions and other characteristics of notes issued by the bangko sentral:**

provided, however, that said notes shall state that they are liabilities of the bangko sentral and are fully guaranteed by the government of the republic of the philippines. said notes shall bear the signatures, in facsimile, of the president of the philippines and of the governor of the bangko sentral.

similarly, the monetary board, with the approval of the president of the philippines, shall prescribe the weight, fineness, designs, denominations and other characteristics of the coins issued by the bangko sentral. in the minting of coins, the monetary board shall give full consideration to the availability of suitable metals and to their relative prices and cost of minting.

section 54. *printing of notes and mining of coins.* - the monetary board shall prescribe the amounts of notes and coins to be printed and minted, respectively, and the conditions to which the printing of notes and the minting of coins shall be subject. the monetary board shall have the authority to contract institutions, mints or firms for such operations.

all expenses incurred in the printing of notes and the minting of coins shall be for the account of the bangko sentral.

section 55. *interconvertibility of currency.* - the bangko sentral shall exchange, on demand and without charge, philippine currency of any denomination for philippine notes and coins of any other denomination requested. if for any reason the bangko sentral is temporarily unable to provide notes or coins of the denominations requested, it shall meet its obligations by delivering notes and coins of the denominations which most nearly approximate those requested.

section 56. *replacement of currency unfit for circulation.* - the bangko sentral shall withdraw from circulation and shall demonetize all notes and coins which for any reason whatsoever are unfit for circulation and shall replace them by adequate notes and coins: provided, however, that the bangko sentral shall not replace notes and coins the identification of which is impossible, coins which show signs of filing, clipping or perforation, and notes which have lost more than two-fifths (2/5) of their surface or all of the signatures inscribed thereon. notes and coins in such mutilated conditions shall be withdrawn from circulation and demonetized without compensation to the bearer.

section 57. *retirement of old notes and coins.* - the bangko sentral may call in for replacement notes of any series or denomination which are more than five (5) years old and coins which are more than (10) years old.

notes and coins called in for replacement in accordance with this provision shall remain legal tender for a period of one (1) year from the date of call. after this period, they shall cease to be legal tender but during the following year, or for such longer period as the monetary board may determine, they may be exchanged at par and without charge in the bangko sentral and by agents duly authorized by the bangko sentral for this purpose. after the expiration of this latter period, the notes and coins which have not been exchanged shall cease to be a liability of the bangko sentral and shall be demonetized. the bangko sentral shall also demonetize all notes and coins which have been called in and replaced.

b. demand deposits

section 58. ***definition.*** **- for purposes of this act, the term "demand deposits" means all those liabilities of the bangko sentral and of other banks which are denominated in philippine currency and are subject to payment in legal tender upon demand by the presentation of checks.**

section 59. ***issue of demand deposits.*** **-only banks duly authorized to do so may accept funds or create liabilities payable in pesos upon demand by the presentation of checks, and such operations shall be subject to the control of the monetary board in accordance with the powers granted it with respect thereto under this act.**

section 60. ***legal character.*** **- checks representing demand deposits do not have legal tender power and their acceptance in the payment of debts, both public and private, is at the option of the creditor: provided, however, that a check which has been cleared and credited to the account of the creditor shall be equivalent to a delivery to the creditor of cash in an amount equal to the amount credited to his account.**

chapter iii — guiding principles of monetary administration by the bangko sentral

article i
domestic monetary stabilization

section 61. ***guiding principle.*** **- the monetary board shall endeavor to control any expansion or contraction in monetary aggregates which is prejudicial to the attainment or maintenance of price stability.**

section 62. ***power to define terms.*** **- for purposes of this article and of this act, the monetary board shall formulate definitions of monetary aggregates, credit and prices and shall make public such definitions and any changes thereof.**

section 63. ***action when abnormal movements occur in the monetary aggregates, credit, or price level.*** **-whenever abnormal movements in the monetary aggregates, in credit, or in prices endanger the stability of the philippine economy or important sectors thereof, the monetary board shall:**

1 (a) take such remedial measures as are appropriate and within the powers granted to the monetary board and the bangko sentral under the provisions of this act; and
1 (b) submit to the president of the philippines and the congress, and make public, a detailed report which shall include, as a minimum, a description and analysis of:
2 (1) the causes of the rise or fall of the monetary aggregates, of credit or of prices;
3 (2) the extent to which the changes in the monetary aggregates, in credit, or in prices have been reflected in changes in the level of domestic output, employment, wages and economic activity in general, and the nature and significance of any such changes; and
4 (3) the measures which the monetary board has taken and the other monetary, fiscal or administrative measures which it recommends to be adopted.

whenever the monetary aggregates, or the level of credit, increases or decreases by more than fifteen percent (15%), or the cost of living index increases by more than ten percent (10%), in relation to the level existing at the end of the corresponding month of the

preceding year, or even though any of these quantitative guidelines have not been reached when in its judgment the circumstances so warrant, the monetary board shall submit the reports mentioned in this section, and shall state therein whether, in the opinion of the board, said changes in the monetary aggregates, credit or cost of living represent a threat to the stability of the philippine economy or of important sectors thereof.

the monetary board shall continue to submit periodic reports to the president of the philippines and to congress until it considers that the monetary, credit or price disturbances have disappeared or have been adequately controlled.

article ii
international monetary stabilization

section 64. ***international monetary stabilization.*** **-the bangko sentral shall exercise its powers under this act to preserve the international value of the peso and to maintain its convertibility into other freely convertible currencies primarily for, although not necessarily limited to, current payments for foreign trade and invisibles.**

section 65. ***international reserves.*** **-in order to maintain the international stability and convertibility of the philippine peso, the bangko sentral shall maintain international reserves adequate to meet any foreseeable net demands on the bangko sentral for foreign currencies.**

in judging the adequacy of the international reserves, the monetary board shall be guided by the prospective receipts and payments of foreign exchange by the philippines. the board shall give special attention to the volume and maturity of the bangko sentral's own liabilities in foreign currencies, to the volume and maturity of the foreign exchange assets and liabilities of other banks operating in the philippines and, insofar as they are known or can be estimated, the volume and maturity of the foreign exchange assets and liabilities of all other persons and entities in the philippines.

section 66. ***composition of the international reserves.*** **-the international reserves of the bangko sentral may include but shall not be limited to the following assets:**

1 (a) gold; and
2 (b) assets in foreign currencies in the form of: documents and instruments customarily employed for the international transfer of funds; demand and time deposits in central banks, treasuries and commercial banks abroad; foreign government securities; and foreign notes and coins.

the monetary board shall endeavor to hold the foreign exchange resources of the bangko sentral in freely convertible currencies; moreover, the board shall give particular consideration to the prospects of continued strength and convertibility of the currencies in which the reserve is maintained, as well as to the anticipated demands for such currencies. the monetary board shall issue regulations determining the other qualifications which foreign exchange assets must meet in order to be included in the international reserves of the bangko sentral.

the bangko sentral shall be free to convert any of the assets in its international reserves into other assets as described in subsections (a) and (b) of this section.

section 67. ***action when the international stability of the peso is threatened.*** **- whenever the international reserve of the bangko sentral falls to a level which the monetary board considers inadequate to meet prospective net demands on the bangko sentral for foreign currencies, or whenever the international reserve appears to be in imminent danger of falling to such a level, or whenever the international reserve is falling as a result of payments or remittances abroad which, in the opinion of the monetary board, are contrary to the national welfare, the monetary board shall:**

1 (a) take such remedial measures as are appropriate and within the powers granted to the monetary board and the bangko sentral under the provisions of this act; and
1 (b) submit to the president of the philippines and to congress a detailed report which shall include, as a minimum, a description and analysis of:
2 (1) the nature and causes of the existing or imminent decline;
3 (2) the remedial measures already taken or to be taken by the monetary board;
4 (3) the monetary, fiscal or administrative measures further proposed; and
5 (4) the character and extent of the cooperation required from other government agencies for the successful execution of the policies of the monetary board.

if the resultant actions fail to check the deterioration of the reserve position of the bangko sentral, or if the deterioration cannot be checked except by chronic restrictions on exchange and trade transactions or by sacrifice of the domestic objectives of a balanced and sustainable growth of the economy, the monetary board shall propose to the president, with appropriate notice of the congress, such additional action as it deems necessary to restore equilibrium in the international balance of payments of the philippines.

the monetary board shall submit periodic reports to the president and to congress until the threat to the international monetary stability of the philippines has disappeared.

chapter iv — instruments of bangko sentral action

article i
general criterion

section 68. ***means of action.*** **- in order to achieve the primary objective of price stability, the monetary board shall rely on its moral influence and the powers granted to it under this act for the management of monetary aggregates.**

article ii
operations in gold and foreign exchange

section 69. ***purchases and sales of gold.*** **- the bangko sentral may buy and sell gold in any form, subject to such regulations as the monetary board may issue. the purchases and sales of gold authorized by this section shall be made in the national currency at the prevailing international market price as determined by the monetary board.**

section 70. ***purchases and sales of foreign exchange.*** **- the bangko sentral may buy**

and sell foreign notes and coins, and documents and instruments of types customarily employed for the international transfer of funds. the bangko sentral may engage in future exchange operations.

the bangko sentral may engage in foreign exchange transactions with the following entities or persons only:

1 (a) banking institutions operating in the philippines;
2 (b) the government, its political subdivisions and instrumentalities;
3 (c) foreign or international financial institutions;
4 (d) foreign governments and their instrumentalities; and
5 (e) other entities or persons which the monetary board is hereby empowered to authorize as foreign exchange dealers, subject to such rules and regulations as the monetary board shall prescribe.

in order to maintain the convertibility of the peso, the bangko sentral may, at the request of any banking institution operating in the philippines, buy any quantity of foreign exchange offered, and sell any quantity of foreign exchange demanded, by such institution, provided that the foreign currencies so offered or demanded are freely convertible into gold or united states dollars. this requirement shall not apply to demands for foreign notes and coins.

the bangko sentral shall effect its exchange transactions between foreign currencies and the philippine peso at the rates determined in accordance with the provisions of section 74 of this act.

section 71. ***foreign asset position of the bangko sentral.*** **- the bangko sentral shall endeavor to maintain at all times a net positive foreign asset position so that its gross foreign exchange assets will always exceed its gross foreign liabilities. in the event that the equivalent amount in pesos of the foreign exchange liabilities of the bangko sentral exceed twice the equivalent amount in pesos of the foreign exchange assets of the bank, the bangko sentral shall, within sixty**
(60) days from the date the limit is exceeded, submit a report to the congress stating the origin of these liabilities, and the manner in which they will be paid.

section 72. ***emergency restrictions on exchange operations.*** **- in order to achieve the primary objective of the bangko sentral as set forth in section 3 of this act, or protect the international reserves of the bangko sentral in the imminence of, or during an exchange crisis, or in time of national emergency and to give the monetary board and the government time in which to take constructive measures to forestall, combat, or overcome such a crisis or emergency, the monetary board, with the concurrence of at least five (5) of its members and with the approval of the president of the philippines, may temporarily suspend or restrict sales of exchange by the bangko sentral, and may subject all transactions in gold and foreign exchange to license by the bangko sentral, and may require that any foreign exchange thereafter obtained by any person residing or entity operating in the philippines be delivered to the bangko sentral or to any bank or agent designated by the bangko sentral for the purpose, at the effective exchange rate or rates: provided, however, that foreign currency deposits made under republic act no. 6426 shall be exempt from these requirements.**

section 73. ***acquisition of inconvertible currencies.*** **- the bangko sentral shall avoid**

the acquisition and holding of currencies which are not freely convertible, and may acquire such currencies in an amount exceeding the minimum balance necessary to cover current demands for said currencies only when, and to the extent that, such acquisition is considered by the monetary board to be in the national interest. the monetary board shall determine the procedures which shall apply to the acquisition and disposition by the bangko sentral of foreign exchange which is not freely utilizable in the international market.

section 74. *exchange rates.* - the monetary board shall determine the exchange rate policy of the country.

the monetary board shall determine the rates at which the bangko sentral shall buy and sell spot exchange, and shall establish deviation limits from the effective exchange rate or rates as it may deem proper. the bangko sentral shall not collect any additional commissions or charges of any sort, other than actual telegraphic or cable costs incurred by it.

the monetary board shall similarly determine the rates for other types of foreign exchange transactions by the bangko sentral, including purchases and sales of foreign notes and coins, but the margins between the effective exchange rates and the rates thus established may not exceed the corresponding margins for spot exchange transactions by more than the additional costs or expenses involved in each type of transactions.

section 75. *operations with foreign entities.* -the monetary board may authorize the bangko sentral to grant loans to and receive loans from foreign banks and other foreign or international entities, both public and private, and may engage in such other operations with these entities as are in the national interest and are appropriate to its character as a central bank. the bangko sentral may also act as agent or correspondent for such entities.

upon authority of the monetary board, the bangko sentral may pledge any gold or other assets which it possesses as security against loans which it receives from foreign or international entities.

article iii
regulation of foreign exchange operations of the banks

section 76. *foreign exchange holdings of the banks.* - in order that the bangko sentral may at all times have foreign exchange resources sufficient to enable it to maintain the international stability and convertibility of the peso, or in order to promote the domestic investment of bank resources, the monetary board may require the banks to sell to the bangko sentral or to other banks all or part of their surplus holdings of foreign exchange. such transfers may be required for all foreign currencies or for only certain of such currencies, according to the decision of the monetary board. the transfers shall be made at the rates established under the provisions of section 74 of this act.

the monetary board may, whenever warranted, determine the net assets and net liabilities of banks and shall, in making such a determination, take into account the bank's

networth, outstanding liabilities, actual and contingent, or such other financial or performance ratios as may be appropriate under the circumstances. any such determination of net assets and net liabilities shall be applied in all banks uniformly and without discrimination.

section 77. ***requirement of balanced currency position.*** **- the monetary board may require the banks to maintain a balanced position between their assets and liabilities in philippine pesos or in any other currency or currencies in which they operate. the banks shall be granted a reasonable period of time in which to adjust their currency positions to any such requirement.**

the powers granted under this section shall be exercised only when special circumstances make such action necessary, in the opinion of the monetary board, and shall be applied to all banks alike and without discrimination.

section 78. ***regulation of non-spot exchange transactions.*** **- in order to restrain the banks from taking speculative positions with respect to future fluctuations in foreign exchange rates, the monetary board may issue such regulations governing bank purchases and sales of non-spot exchange as it may consider necessary for said purpose.**

section 79. ***other exchange profits and losses.*** **- the banks shall bear the risks of non-compliance with the terms of the foreign exchange documents and instruments which they buy and sell, and shall also bear any other typically commercial or banking risks, including exchange risks not assumed by the bangko sentral under the provisions of the preceding section.**

section 80. ***information on exchange operations.*** **- the banks shall report to the bangko sentral the volume and composition of their purchases and sales of gold and foreign exchange each day, and must furnish such additional information as the bangko sentral may request with reference to the movements in their accounts in foreign currencies.**

the monetary board may also require other persons and entities to report to it currently all transactions or operations in gold, in any shape or form, and in foreign exchange whether entered into or undertaken by them directly or through agents, or to submit such data as may be required on operations or activities giving rise to or in connection with or relating to a gold or foreign exchange transaction. the monetary board shall prescribe the forms on which such declarations must be made. the accuracy of the declarations may be verified by the bangko sentral by whatever inspection it may deem necessary.

article iv
loans to banking and other financial institutions

a. credit policy

section 81. ***guiding principles.*** **- the rediscounts, discounts, loans and advances which the bangko sentral is authorized to extend to banking institutions under the provisions of the present article of this act shall be used to influence the volume of credit consistent with the objective of price stability.**

b. normal credit operations

section 82. *authorized types of operations.* -subject to the principle stated in the preceding section of this act, the bangko sentral may normally and regularly carry on the following credit operations with banking institutions operating in the philippines:

1 (a) commercial credits. - the bangko sentral may rediscount, discount, buy and sell bills, acceptances, promissory notes and other credit instruments with maturities of not more than one hundred eighty (180) days from the date of their rediscount, discount or acquisition by the bangko sentral and resulting from transactions related to:
2 (1) the importation, exportation, purchase or sale of readily saleable goods and products, or their transportation within the philippines; or
3 (2) the storing of non-perishable goods and products which are duly insured and deposited, under conditions assuring their preservation, in authorized bonded warehouses or in other places approved by the monetary board.
2 (b) production credits. - the bangko sentral may rediscount, discount, buy and sell bills, acceptances, promissory notes and other credit instruments having maturities of not more than three hundred sixty (360) days from the date of their rediscount, discount or acquisition by the bangko sentral and resulting from transactions related to the production or processing of agricultural, animal, mineral, or industrial products. documents or instruments acquired in accordance with this subsection shall be secured by a pledge of the respective crops or products: provided, however, that the crops or products need not be pledged to secure the documents if the original loan granted by the bangko sentral is secured by a lien or mortgage on real estate property seventy percent (70%) of the appraised value of which equals or exceeds the amount of the loan granted.
3 (c) other credits. - special credit instruments not otherwise rediscountable under the immediately preceding subsections (a) and (b) may be eligible for rediscounting in accordance with rules and regulations which the bangko sentral shall prescribe. whenever necessary, the bangko sentral shall provide funds from non-inflationary sources: provided, however, that the monetary board shall prescribe additional safeguards for disbursing these funds.
4 (d) advances. - the bangko sentral may grant advances against the following kinds of collaterals for fixed periods which, with the exception of advances against collateral named in clause (4) of the present subsection, shall not exceed one hundred eighty (180) days:

1 (1) gold coins or bullion;
2 (2) securities representing obligations of the bangko sentral or of other domestic institutions of recognized solvency;
3 (3) the credit instruments to which reference is made in subsection (a) of this section;
4 (4) the credit instruments to which reference is made in subsection (b) of this section, for periods which shall not exceed three hundred sixty (360) days;
5 (5) utilized portions of advances in current amount covered by regular overdraft agreements related to operations included under subsections (a) and (b) of this section, and certified as to amount and liquidity by the institution soliciting the advance;
6 (6) negotiable treasury bills, certificates of indebtedness, notes and other negotiable obligations of the government maturing within three (3) years from the date of the advance; and
7 (7) negotiable bonds issued by the government of the philippines, by philippine

provincial, city or municipal governments, or by any philippine government instrumentality, and having maturities of not more than ten (10) years from the date of advance.

the rediscounts, discounts, loans and advances made in accordance with the provisions of this section may not be renewed or extended unless extraordinary circumstances fully justify such renewal or extension.

advances made against the collateral named in clauses (6) and (7) of subsection (d) of this section may not exceed eighty percent (80%) of the current market value of the collateral.

c. special credit operation

section 83. ***loans for liquidity purposes.*** **- the bangko sentral may extend loans and advances to banking institutions for a period of not more than seven (7) days without any collateral for the purpose of providing liquidity to the banking system in times of need.**

d. emergency credit operation

section 84. ***emergency loans and advances.*** **- in periods of national and/or local emergency or of imminent financial panic which directly threaten monetary and banking stability, the monetary board may, by a vote of at least five (5) of its members, authorize the bangko sentral to grant extraordinary loans or advances to banking institutions secured by assets as defined hereunder: provided, that while such loans or advances are outstanding, the debtor institution shall not, except upon prior authorization by the monetary board, expand the total volume of its loans or investments.**

the monetary board may, at its discretion, likewise authorize the bangko sentral to grant emergency loans or advances to banking institutions, even during normal periods, for the purpose of assisting a bank in a precarious financial condition or under serious financial pressures brought by unforeseen events, or events which, though foreseeable, could not be prevented by the bank concerned: provided, however, that the monetary board has ascertained that the bank is not insolvent and has the assets defined hereunder to secure the advances: provided, further, that a concurrent vote of at least five (5) members of the monetary board is obtained.

the amount of any emergency loan or advance shall not exceed the sum of fifty percent (50%) of total deposits and deposit substitutes of the banking institution and shall be disbursed in two (2) or more tranches. the amount of the first tranche shall be limited to twenty-five percent (25%) of the total deposit and deposit substitutes of the institution and shall be secured by government securities to the extent of their applicable loan values and other unencumbered first class collaterals which the monetary board may approve: provided, that if as determined by the monetary board, the circumstances surrounding the emergency warrant a loan or advance greater than the amount provided hereinabove, the amount of the first tranche may exceed twenty-five percent (25%) of the bank's total deposit and deposit substitutes if the same is adequately secured by applicable loan values of government securities and unencumbered first class collaterals approved by the monetary board, and the principal stockholders of the institution furnish an acceptable

undertaking to indemnify and hold harmless from suit a conservator whose appointment the monetary board may find necessary at any time.

prior to the release of the first tranche, the banking institution shall submit to the bangko sentral a resolution of its board of directors authorizing the bangko sentral to evaluate other assets of the banking institution certified by its external auditor to be good and available for collateral purposes should the release of the subsequent tranche be thereafter applied for.

the monetary board may, by a vote of at least five (5) of its members, authorize the release of a subsequent tranche on condition that the principal stockholders of the institution:

1 (a) furnish an acceptable undertaking to indemnify and hold harmless from suit a conservator whose appointment the monetary board may find necessary at any time; and
2 (b) provide acceptable security which, in the judgment of the monetary board, would be adequate to supplement, where necessary, the assets tendered by the banking institution to collateralize the subsequent tranche.

in connection with the exercise of these powers, the prohibitions in section 128 of this act shall not apply insofar as it refers to acceptance as collateral of shares and their acquisition as a result of foreclosure proceedings, including the exercise of voting rights pertaining to said shares: provided, however, that should the bangko sentral acquire any of the shares it has accepted as collateral as a result of foreclosure proceedings, the bangko sentral shall dispose of said shares by public bidding within one (1) year from the date of consolidation of title by the bangko sentral.

whenever a financial institution incurs an overdraft in its account with the bangko sentral, the same shall be eliminated within the period prescribed in section 102 of this act.

e. credit terms

section 85. *interest and rediscount.* - the bangko sentral shall collect interest and other appropriate charges on all loans and advances it extends, the closure, receivership or liquidations of the debtor-institution notwithstanding. this provision shall apply prospectively.

the monetary board shall fix the interest and rediscount rates to be charged by the bangko sentral on its credit operations in accordance with the character and term of the operation, but after due consideration has been given to the credit needs of the market, the composition of the bangko sentral's portfolio, and the general requirements of the national monetary policy. interest and rediscount rates shall be applied to all banks of the same category uniformly and without discrimination.

section 86. *endorsement.* - the documents rediscounted, discounted, bought or accepted as collateral by the bangko sentral in the course of the credit operations authorized in this article shall bear the endorsement of the institution from which they are received.

section 87. *repayment of credits.* -documents rediscounted, discounted or accepted as collateral by the bangko sentral must be withdrawn by the borrowing

institution on the dates of their maturities, or upon liquidation of the obligations which they represent or to which they relate whenever said obligations have been liquidated prior to their dates of maturity.

banks shall have the right at any time to withdraw any documents which they have presented to the bangko sentral as collateral, upon payment in full of the corresponding debt to the bangko sentral, including interest charges.

section 88. *other requirements.* - the monetary board may prescribe, within the general powers granted to it under this act, additional conditions which borrowing institutions must satisfy in order to have access to the credit of the bangko sentral. these conditions may refer to the rates of interest charged by the banks, to the purposes for which their loans in general are destined, and to any other clearly definable aspect of the credit policy of the bank.

section 89. *provisional advances to the national government.* - the bangko sentral may make direct provisional advances with or without interest to the national government to finance expenditures authorized in its annual appropriation: provided, that said advances shall be repaid before the end of three (3) months extendible by another three (3) months as the monetary board may allow following the date the national government received such provisional advances and shall not, in their aggregate, exceed twenty percent (20%) of the average annual income of the borrower for the last three (3) preceding fiscal years.

article v open market operations for the account of the bangko sentral

section 90. *principles of open market operations.* - the open market purchases and sales of securities by the bangko sentral shall be made exclusively in accordance with its primary objective of achieving price stability.

section 91. *purchases and sales of government securities.* - in order to achieve the objectives of the national monetary policy, the bangko sentral may, in accordance with the principle stated in section 90 of this act and with such rules and regulations as may be prescribed by the monetary board, buy and sell in the open market for its own account:

1 (a) evidences of indebtedness issued directly by the government of the philippines or by its political subdivisions; and
2 (b) evidences of indebtedness issued by government instrumentalities and fully guaranteed by the government.

the evidences of indebtedness acquired under the provisions of this section must be freely negotiable and regularly serviced and must be available to the general public through banking institutions and local government treasuries in denominations of a thousand pesos or more.

section 92. *issue and negotiation of bangko sentral obligations.* -in order to provide the bangko sentral with effective instruments for open market operations, the bangko sentral may, subject to such rules and regulations as the monetary board may prescribe and in accordance with the principles stated in section 90 of this act, issue, place, buy and sell freely negotiable evidences of indebtedness of the bangko sentral: provided, that issuance of such certificates of indebtedness shall be made only in cases of extraordinary

movement in price levels. said evidences of indebtedness may be issued directly against the international reserve of the bangko sentral or against the securities which it has acquired under the provisions of section 91 of this act, or may be issued without relation to specific types of assets of the bangko sentral.

the monetary board shall determine the interest rates, maturities and other characteristics of said obligations of the bangko sentral, and may, if it deems it advisable, denominate the obligations in gold or foreign currencies.

subject to the principles stated in section 90 of this act, the evidences of indebtedness of the bangko sentral to which this section refers may be acquired by the bangko sentral before their maturity, either through purchases in the open market or through redemptions at par and by lot if the bangko sentral has reserved the right to make such redemptions. the evidences of indebtedness acquired or redeemed by the bangko sentral shall not be included among its assets, and shall be immediately retired and cancelled.

article vi
composition of bangko sentral's portfolio

section 93. ***review of the bangko sentral's portfolio.*** **- at least once every month the monetary board shall review the portfolio of the bangko sentral in relation to its future credit policy. in reviewing the bangko sentral's portfolio, the monetary board shall especially consider whether a sufficiently large part of the portfolio consists of assets with early maturities, in order that a contraction in bangko sentral credit may be effected promptly whenever the national monetary policy so requires.**

article vii
bank reserves

section 94. ***reserve requirements.*** **-in order to control the volume of money created by the credit operations of the banking system, all banks operating in the philippines shall be required to maintain reserves against their deposit liabilities: provided, that the monetary board may, at its discretion, also require all banks and/or quasi-banks to maintain reserves against funds held in trust and liabilities for deposit substitutes as defined in this act. the required reserves of each bank shall be proportional to the volume of its deposit liabilities and shall ordinarily take the form of a deposit in the bangko sentral. reserve requirements shall be applied to all banks of the same category uniformly and without discrimination.**

reserves against deposit substitutes, if imposed, shall be determined in the same manner as provided for reserve requirements against regular bank deposits, with respect to the imposition, increase, and computation of reserves.

the monetary board may exempt from reserve requirements deposits and deposit substitutes with remaining maturities of two (2) years or more, as well as interbank borrowings.

since the requirement to maintain bank reserves is imposed primarily to control the volume of money, the bangko sentral shall not pay interest on the reserves maintained with it unless the monetary board decides otherwise as warranted by circumstances.

section 95. *definition of deposit substitutes.* - the term "deposit substitutes" is defined as an alternative form of obtaining funds from the public, other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrower's own account, for the purpose of relending or purchasing of receivables and other obligations. these instruments may include, but need not be limited to, bankers acceptances, promissory notes, participations, certificates of assignment and similar instruments with recourse, and repurchase agreements. the monetary board shall determine what specific instruments shall be considered as deposit substitutes for the purposes of section 94 of this act: provided, however, that deposit substitutes of commercial, industrial and other non-financial companies for the limited purpose of financing their own needs or the needs of their agents or dealers shall not be covered by the provisions of section 94 of this act.

section 96. *required reserves against peso deposits.* - the monetary board may fix and, when it deems necessary, alter the minimum reserve ratios to peso deposits, as well as to deposit substitutes, which each bank and/or quasi-bank may maintain, and such ratio shall be applied uniformly to all banks of the same category as well as to quasi-banks.

section 97. *required reserves against foreign currency deposits.* - the monetary board is similarly authorized to prescribe and modify the minimum reserve ratios applicable to deposits denominated in foreign currencies.

section 98. *reserves against unused balances of overdraft lines.* - in order to facilitate bangko sentral control over the volume of bank credit, the monetary board may establish minimum reserve requirements for unused balances of overdraft lines.

the powers of the monetary board to prescribe and modify reserve requirements against unused balances of overdraft lines shall be the same as its powers with respect to reserve requirements against demand deposits.

section 99. *increase in reserve requirements.* - whenever in the opinion of the monetary board it becomes necessary to increase reserve requirements against existing liabilities, the increase shall be made in a gradual manner and shall not exceed four percentage points in any thirty-day period. banks and other affected financial institutions shall be notified reasonably in advance of the date on which such increase is to become effective.

section 100. *computation on reserves.* - the reserve position of each bank or quasi-bank shall be calculated daily on the basis of the amount, at the close of business for the day, of the institution's reserves and the amount of its liability accounts against which reserves are required to be maintained: provided, that with reference to holidays or non-banking days, the reserve position as calculated at the close of the business day immediately preceding such holidays and non-banking days shall apply on such days.

for the purpose of computing the reserve position of each bank or quasi-bank, its principal office in the philippines and all its branches and agencies located therein shall be considered as a single unit.

section 101. ***reserve deficiencies.*** **-whenever the reserve position of any bank or quasi-bank, computed in the manner specified in the preceding section of this act, is below the required minimum, the bank or quasi-bank shall pay the bangko sentral one-tenth of one percent (1/10 of 1%) per day on the amount of the deficiency or the prevailing ninety-one-day treasury bill rate plus three percentage points, whichever is higher: provided, however, that banks and quasi-banks shall ordinarily be permitted to offset any reserve deficiency occurring on one or more days of the week with any excess reserves which they may hold on other days of the same week and shall be required to pay the penalty only on the average daily deficiency during the week. in cases of abuse, the monetary board may deny any bank or quasi-bank the privilege of offsetting reserve deficiencies in the aforesaid manner.**

if a bank or quasi-bank chronically has a reserve deficiency, the monetary board may limit or prohibit the making of new loans or investments by the institution and may require that part or all of the net profits of the institution be assigned to surplus.

the monetary board may modify or set aside the reserve deficiency penalties provided in this section, for part or the entire period of a strike or lockout affecting a bank or a quasi-bank as defined in the labor code, or of a national emergency affecting operations of banks or quasi-banks. the monetary board may also modify or set aside reserved deficiency penalties for rehabilitation program of a bank.

section 102. ***interbank settlement.*** **- the bangko sentral shall establish facilities for interbank clearing under such rules and regulations as the monetary board may prescribe: provided, that the bangko sentral may charge administrative and other fees for the maintenance of such facilities.**

the deposit reserves maintained by the banks in the bangko sentral in accordance with the provisions of section 94 of this act shall serve as basis for the clearing of checks and the settlement of interbank balances, subject to such rules and regulations as the monetary board may issue with respect to such operations: provided, that any bank which incurs on overdrawing in its deposit account with the bangko sentral shall fully cover said overdraft, including interest thereon at a rate equivalent to one-tenth of one percent (1/10 of 1%) per day or the prevailing ninety-one-day treasury bill rate plus three percentage points, whichever is higher, not later than the next clearing day: provided, further, that settlement of clearing balances shall not be effected for any account which continues to be overdrawn for five (5) consecutive banking days until such time as the overdrawing is fully covered or otherwise converted into an emergency loan or advance pursuant to the provisions of section 84 of this act: provided, finally, that the appropriate clearing office shall be officially notified of banks with overdrawn balances. banks with existing overdrafts with the bangko sentral as of the effectivity of this act shall, within such period as may be prescribed by the monetary board, either convert the overdraft into an emergency loan or advance with a plan of payment, or settle such overdrafts, and that, upon failure to so comply herewith, the bangko sentral shall take such action against the bank as may be warranted under this act.

section 103. ***exemption from attachment and other purposes.*** **- deposits maintained by banks with the bangko sentral as part of their reserve requirements shall be exempt from attachment, garnishments, or any other order or process of any court, government agency or any other administrative body issued to satisfy the claim of a party other than the government, or its political subdivisions or instrumentalities.**

article viii
selective regulation of bank operations

section 104. *guiding principle.* - the monetary board shall use the powers granted to it under this act to ensure that the supply, availability and cost of money are in accord with the needs of the philippine economy and that bank credit is not granted for speculative purposes prejudicial to the national interests. regulations on bank operations shall be applied to all banks of the same category uniformly and without discrimination.

section 105. *margin requirements against letters of credit.* - the monetary board may at any time prescribe minimum cash margins for the opening of letters of credit, and may relate the size of the required margin to the nature of the transaction to be financed.

section 106. *required security against bank loans.* - in order to promote liquidity and solvency of the banking system, the monetary board may issue such regulations as it may deem necessary with respect to the maximum permissible maturities of the loans and investments which the banks may make, and the kind and amount of security to be required against the various types of credit operations of the banks.

section 107. *portfolio ceilings.* - whenever the monetary board considers it advisable to prevent or check an expansion of bank credit, the board may place an upper limit on the amount of loans and investments which the banks may hold, or may place a limit on the rate of increase of such assets within specified periods of time. the monetary board may apply such limits to the loans and investments of each bank or to specific categories thereof.

in no case shall the monetary board establish limits which are below the value of the loans or investments of the banks on the date on which they are notified of such restrictions. the restrictions shall be applied to all banks uniformly and without discrimination.

section 108. *minimum capital ratios.* - the monetary board may prescribe minimum ratios which the capital and surplus of the banks must bear to the volume of their assets, or to specific categories thereof, and may alter said ratios whenever it deems necessary.

article ix

coordination of credit policies by government institutions

section 109. *coordination of credit policies.* - government-owned corporations which perform banking or credit functions shall coordinate their general credit policies with those of the monetary board.

toward this end, the monetary board may, whenever it deems it expedient, make suggestions or recommendations to such corporations for the more effective coordination of their policies with those of the bangko sentral.

Chapter v — functions as banker and financial advisor of the government

article I

functions as banker of the government

section 110. *designation of bangko sentral as banker of the government.* - the bangko sentral shall act as a banker of the government, its political subdivisions and instrumentalities.

section 111. *representation with the international monetary fund.* - the bangko sentral shall represent the government in all dealings, negotiations and transactions with the international monetary fund and shall carry such accounts as may result from philippine membership in, or operations with, said fund.

section 112. *representation with other financial institutions.* - the bangko sentral may be authorized by the government to represent it in dealings, negotiations or transactions with the international bank for reconstruction and development and with other foreign or international financial institutions or agencies. the president may, however, designate any of his other financial advisors to jointly represent the government in such dealings, negotiations or transactions.

section 113. *official deposits.* - the bangko sentral shall be the official depository of the government, its political subdivisions and instrumentalities as well as of government-owned or controlled corporations and, as a general policy, their cash balances should be deposited with the bangko sentral, with only minimum working balances to be held by government-owned banks and such other banks incorporated in the philippines as the monetary board may designate, subject to such rules and regulations as the board may prescribe: provided, that such banks may hold deposits of the political subdivisions and instrumentalities of the government beyond their minimum working balances whenever such subdivisions or instrumentalities have outstanding loans with said banks.

the bangko sentral may pay interest on deposits of the government or of its political subdivisions and instrumentalities, as well as on deposits of banks with the bangko sentral.

section 114. *fiscal operations.* - the bangko sentral shall open a general cash account for the treasurer of the philippines, in which the liquid funds of the government shall be deposited.

transfers of funds from this account to other accounts shall be made only upon order of the treasurer of the philippines.

section 115. *other banks as agents of the bangko sentral.* - in the performance of its functions as fiscal agent, the bangko sentral may engage the services of other government-owned and controlled banks and of other domestic banks for operations in localities at home or abroad in which the bangko sentral does not have offices or agencies adequately equipped to perform said operations: provided, however, that for fiscal operations in foreign countries, the bangko sentral may engage the services of foreign banking and financial institutions.

section 116. *remuneration for services.* - the bangko sentral may charge equitable rates, commissions or fees for services which it renders to the government, its political subdivisions and instrumentalities.

Article ii

the marketing and stabilization of securities for the account of the government

a. the issue and placing of government securities

section 117. ***issue of government obligations.*** **- the issue of securities representing obligations of the government, its political subdivisions or instrumentalities, may be made through the bangko sentral, which may act as agent of, and for the account of, the government or its respective subdivisions or instrumentality, as the case may be: provided, however, that the bangko sentral shall not guarantee the placement of said securities, and shall not subscribe to their issue except to replace its maturing holdings of securities with the same type as the maturing securities.**

section 118. ***methods of placing government securities.*** **- the bangko sentral may place the securities to which the preceding section refers through direct sale to financial institutions and the public.**

the bangko sentral shall not be a member of any stock exchange or syndicate, but may intervene therein for the sole purpose of regulating their operations in the placing of government securities.

the government, or its political subdivisions or instrumentalities, shall reimburse the bangko sentral for the expenses incurred in the placing of the aforesaid securities.

section 119. ***servicing and redemption of the public debt.*** **- the servicing and redemption of the public debt shall also be effected through the bangko sentral.**

b. bangko sentral support of the government securities market

section 120. ***the securities stabilization fund.*** **- there shall be established a "securities stabilization fund" which shall be administered by the bangko sentral for the account of the government.**

the operations of the securities stabilization fund shall consist of purchases and sales, in the open market, of bonds and other evidences of indebtedness issued or fully guaranteed by the government. the purpose of these operations shall be to increase the liquidity and stabilize the value of said securities in order thereby to promote investment in government obligations.

the monetary board shall use the resources of the fund to prevent, or moderate, sharp fluctuations in the quotations of said government obligations, but shall not endeavor to alter movements of the market resulting from basic changes in the pattern or level of interest rates.

the monetary board shall issue such regulations as may be necessary to implement the provisions of this section.

section 121. ***resources of the securities stabilization fund.*** **- subject to section 132 of this act, the resources of the securities stabilization fund shall come from the balance of the fund as held by the central bank under republic act no. 265 as of the effective date of**

this act.

section 122. ***profits and losses of the fund.*** **- the securities stabilization fund shall retain net profits which it may make on its operations, regardless of whether said profits arise from capital gains or from interest earnings. the fund shall correspondingly bear any net losses which it may incur.**

article iii
functions as financial advisor of the government

section 123. ***financial advice on official credit operations.*** **- before undertaking any credit operation abroad, the government, through the secretary of finance, shall request the opinion, in writing, of the monetary board on the monetary implications of the contemplated action. such opinions must similarly be requested by all political subdivisions and instrumentalities of the government before any credit operation abroad is undertaken by them.**

the opinion of the monetary board shall be based on the gold and foreign exchange resources and obligations of the nation and on the effects of the proposed operation on the balance of payments and on monetary aggregates.

whenever the government, or any of its political subdivisions or instrumentalities, contemplates borrowing within the philippines, the prior opinion of the monetary board shall likewise be requested in order that the board may render an opinion on the probable effects of the proposed operation on monetary aggregates, the price level, and the balance of payments.

section 124. ***representation on the national economic and development authority.*** **-in order to assure effective coordination between the economic, financial and fiscal policies of the government and the monetary, credit and exchange policies of the bangko sentral, the deputy governor designated by the governor of the bangko sentral shall be an ex officio member of the national economic and development authority board.**

Chapter VI — privileges and prohibitions

Article I
privileges

section 125. ***tax exemptions.*** **-the bangko sentral shall be exempt for a period of five (5) years from the approval of this act from all national, provincial, municipal and city taxes, fees, charges and assessments.**

the exemption authorized in the preceding paragraph of this section shall apply to all property of the bangko sentral, to the resources, receipts, expenditures, profits and income of the bangko sentral, as well as to all contracts, deeds, documents and transactions related to the conduct of the business of the bangko sentral: provided,

however, that said exemptions shall apply only to such taxes, fees, charges and assessments for which the bangko sentral itself would otherwise be liable, and shall not apply to taxes, fees, charges, or assessments payable by persons or other entities doing business with the bangko sentral: provided, further, that foreign loans and other obligations of the bangko sentral shall be exempt, both as to principal and interest, from any and all taxes if the payment of such taxes has been assumed by the bangko sentral.

section 126. *exemption from customs duties.* - the provision of any general or special law to the contrary notwithstanding, the importation and exportation by the bangko sentral of notes and coins, and of gold and other metals to be used for purposes authorized under this act, and the importation of all equipment needed for bank note production, minting of coins, metal refining and other security printing operations shall be fully exempt from all customs duties and consular fees and from all other taxes, assessments and charges related to such importation or exportation.

section 127. *applicability of the civil service law.* -appointments in the bangko sentral, except as to those which are policy-determining, primarily confidential or highly technical in nature, shall be made only according to the civil service law and regulations: provided, that no qualification requirements for positions in the bangko sentral shall be imposed other than those set by the monetary board: provided, further, that, the monetary board or governor, in accordance with sections 15(c) and 17(d) of this act, respectively, may without need of obtaining prior approval from any other government agency, appoint personnel in the bangko sentral whose services are deemed necessary in order not to unduly disrupt the operations of the bangko sentral.

officers and employees of the bangko sentral, including all members of the monetary board, shall not engage directly or indirectly in partisan activities or take part in any election except to vote.

article ii
prohibitions

section 128. *prohibitions.* -the bangko sentral shall not acquire shares of any kind or accept them as collateral, and shall not participate in the ownership or management of any enterprise, either directly or indirectly.

the bangko sentral shall not engage in development banking or financing: provided, however, that outstanding loans obtained or extended for development financing shall not be affected by the prohibition of this section.

chapter vii — transitory provisions

section 129. ***phase-out of fiscal agency functions.*** **-unless circumstances warrant otherwise and approved by the congress oversight committee, the bangko sentral shall, within a period of three (3) years but in no case longer than five (5) years from the approval of this act, phase out all fiscal agency functions provided for in sections 117, 118, 119, and 120 as well as in other pertinent provisions of this act and transfer the same to the department of finance.**

section 130. ***phase-out of regulatory powers over the operations of finance corporations and other institutions performing similar functions.*** **- the bangko sentral shall, within a period of five (5) years from the effectivity of this act, phase out its regulatory powers over finance companies without quasi-banking functions and other institutions performing similar functions as provided in existing laws, the same to be assumed by the securities and exchange commission.**

section 131. ***implementing details.*** **- the bangko sentral shall be made operational by the performance of the following acts:**

0 (a) the president shall constitute the monetary board by appointing the members thereof within sixty (60) days from the effectivity of this act; and
2 (b) the transfer of such assets and liabilities from the central bank to the bangko sentral as provided in section 132 shall be completed within ninety (90) days from the constitution of the monetary board.

all incumbent personnel in the central bank as of the date of the approval of this act shall continue to exercise their duties and functions as personnel of the bangko sentral subject to the provisions of section 133: provided, that such personnel in the central bank as may be necessary for the purpose of implementing section 132 may be assigned by the bangko sentral monetary board to the central bank.

section 132. ***transfer of assets and liabilities.*** **- upon the effectivity of this act, three (3) members of the monetary board, which may include the governor, in representation of the bangko sentral, the secretary of finance and the secretary of budget and management in representation of the national government, and the chairmen of the committees on banks of the senate and the house of representatives shall determine the assets and liabilities of the central bank which may be transferred to or assumed by the bangko sentral. the committee shall complete its work within ninety (90) days from the constitution of the monetary board submitting a comprehensive report with all its findings and justification.**

the following guidelines shall be strictly observed in the

determination of which assets and liabilities shall be transferred to the bangko sentral:

1 (a) the monetary board and the secretary of finance shall have primary responsibility for working out creative monetary and financial solutions to retire the central bank liabilities and losses at the least cost to the government;
2 (b) the bangko sentral shall remit seventy-five percent (75%) of its net profits to a special deposit account (sinking fund) until such time as the net liabilities of the central bank shall have been liquidated through generally accepted finance mechanisms such as, but not limited to, write-offs, set-offs, condonation, collections, reappraisal, revaluation and bond issuance by the national government, or to the national government as dividends;
3 (c) the assets and liabilities to be transferred shall be limited to an amount that will enable the bangko sentral to perform its responsibilities adequately and operate on a viable basis: provided, that the assets shall exceed the liabilities as certified by the commission on audit (coa), by an initial amount of ten billion pesos (p10,000,000,000);
4 (d) liabilities to be assumed by the bangko sentral shall include liability for notes and coins in circulation as of the effective date of this act; and
5 (e) any asset or liability of the central bank not transferred to the bangko sentral shall be retained and administered, disposed of and liquidated by the central bank itself which shall continue to exist as the cb board of liquidators only for the purposes provided in this paragraph but not later than twenty-five (25) years or until such time that liabilities have been liquidated: provided, that the bangko sentral may financially assist the central bank of liquidators in the liquidation of cb liabilities: provided, finally, that upon disposition of said retained assets and liquidation of said retained liabilities, the central bank shall be deemed abolished.

all actions taken by the bangko sentral monetary board under this section shall be reported to congress and the president within thirty (30) days.

section 133. *mandate to organize.* - the bangko sentral shall be organized by the monetary board without being subject to the provisions of republic act no. 7430, by adopting if it so desires, an entirely new staffing pattern on organizational structure to suit the operations of the bangko sentral under this act. no preferential or priority right shall be given to or enjoyed by any personnel for appointment to any position in the new staffing pattern, nor shall any personnel be considered as having prior or vested rights with respect to retention in the bangko sentral or in any position which may be created in the new staffing pattern, even if he should be the incumbent of a similar position prior to organization. the formulation of the program of organization shall be completed within six (6)

months after the effectivity of this act, and shall be fully implemented within a period of six (6) months thereafter. personnel who may not be retained are deemed separated from the service.

section 134. *separation benefits.* - pursuant to section 15 of this act, the monetary board is authorized to provide separation incentives, and all those who shall retire or be separated from the service on account of reorganization under the preceding section shall be entitled to such incentives, which shall be in addition to all gratuities and benefits to which they may be entitled under existing laws.

section 135. *repealing clause.* - except as may be provided for in section 46 and 132 of this act, republic act no. 265, as amended, the provisions of any other law, special charters, rule or regulation issued pursuant to said republic act no. 265, as amended, or parts thereof, which may be inconsistent with the provisions of this act are hereby repealed. presidential decree no. 1792 is likewise repealed.

section 136. *transfer of powers.* -all powers, duties and functions vested by law in the central bank of the philippines not inconsistent with the provisions of this act shall be deemed transferred to the bangko sentral ng pilipinas. all references to the central bank of the philippines in any law or special charters shall be deemed to refer to the bangko sentral.

section 137. *separability clause.* - if any provision or section of this act or the application thereof to any person or circumstance is held invalid, the other provisions or sections of this act, and the application of such provision or section to other persons or circumstances, shall not be affected thereby.

section 138. *effectivity clause.* - this act shall take effect fifteen (15) days following its publication in the official gazette or in two (2) national newspapers of general circulation.

Approved: June 14, 1993

ANNEX C
EXECUTIVE ORDER NO. 323

MALACAÑANG

MANILA

BY THE PRESIDENT OF THE PHILIPPINES

CONSTITUTING AN INTER-AGENCY PRIVATIZATION COUNCIL (PC) AND CREATING A PRIVATIZATION AND MANAGEMENT OFFICE (PMO) UNDER THE DEPARTMENT OF FINANCE FOR THE CONTINUING PRIVATIZATION OF GOVERNMENT ASSETS AND CORPORATIONS

Whereas, pursuant to Republic Act No. 8758 s. 1999, the life of the Committee on Privatization (COP) and the Asset Privatization Trust (APT) will expire on December 31, 2000.

Whereas, Republic Act No. 8758 provided that, "All assets held by the Asset Privatization Trust, all moneys and other properties belonging to it, and all its liabilities outstanding upon the expiration of its term shall revert to and be assumed by the National Government".

Whereas, Republic Act No. 8758 mandated the transfer for disposition of the assets held by the APT by the President of the Philippines to the trust department of the appropriate government agency upon the expiration of the term of APT;

Whereas, Executive Order No. 12, s. 1998 reaffirmed the privatization policy of the Government by encouraging all heads of departments, bureaus, agencies and instrumentalities including government owned and controlled corporations to identify assets and activities that can be efficiently and effectively undertaken by the private sector; by broadening the coverage of privatization activities with the inclusion of some authorities such as Bases Conversion and Development Authority (BCDA), Public Estates Authority (PEA), Philippine Tourism Authority (PTA), Philippine Economic Zone Authority (PEZA) and Subic Bay Metropolitan Authority (SBMA); and by directing the COP to consider other alternative modes of privatization such as leasing, management and maintenance contracts, BOT schemes or joint venture arrangements;

Whereas, under the Constitution and under the Administrative Code of 1987, the President, as Chief Executive, has control and supervision over, and the authority to reorganize, the Executive Branch of the Government, including the Office of the President;

Whereas, the Government's privatization program has proven beneficial and helpful to the economy in terms of generating revenues, improving

investment climate, attracting foreign capital and investments, broadening ownership base, developing capital markets and fostering private sector participation;

Whereas, there are remaining partially sold and undisposed accounts approved for privatization consisting of 150 transferred assets, of which 88 are partially sold and 62 are still undisposed, 57 government owned and controlled corporations, of which 31 have been partially sold and 26 are still undisposed, and several surrendered properties with sizeable amount of projected revenues for the much-needed resources of the Government;

Whereas, there is a vast opportunity for greater private sector participation in the development of the Philippine economy with the successful launching of Government's PROGRESS Bonds and the pending enactment by Congress of the bill restructuring of the power industry and privatizing the National Power Corporation;

NOW, THEREFORE, I, JOSEPH EJERCITO ESTRADA, President of the Philippines, by virtue of the powers vested in me by law, do hereby order:

ArticleI. Restatement of the Policy

Section 1. Restatement of Policy. The National Government hereby restates its privatization policy to promote an orderly, coordinated and efficient privatization of remaining government corporations, assets, activities and idle properties which have been identified as unnecessary and inappropriate for the government sector to maintain.

Article II. The Privatization Council

Section 1. Organization. There is hereby established a Privatization Council (PC), referred to as the "Council", to oversee the privatization program of the Government.

Section 2. Composition. The Council shall be composed of the Secretary of Finance as Chairman, with the Secretary of Budget and Management, Trade and Industry, National Economic and Development Authority and Justice as members. The National Treasurer and the Chairman of the Presidential Commission on Good Government shall be non-voting members of the Council. The Technical Committee shall also be established to be composed of the representative of the Department of Finance as Chairman, and representatives of the Department of Justice, Department of Budget and Management, Department of Trade and Industry, National Economic Development Authority, Bureau of Treasury and the PCGG, as members.

Section 3. Objectives, Powers and Functions. The Council shall direct, supervise and coordinate all privatization and similar disposition efforts undertaken by the Government in order to promote private sector participation in developing the Philippine economy and to generate maximum cash recovery for the National Government. In pursuit of these objectives, the Council shall assume all the powers, functions, duties and

responsibilities, all properties, real or personal assets, equipment and records, as well as the obligations and liabilities previously held or exercised by the COP under Proclamation No. 50, as amended, which have been devolved to the National Government pursuant to Republic Act No. 8758.

Section 4. Meetings. The Council shall meet at least twice a month, or as frequently as necessary to effectively discharge its functions and responsibilities and expedite the disposition of GOCCs, assets, activities and other government properties. The presence of the majority of the voting members shall constitute a quorum and the concurrence of said majority should be adequate for any decision of the Council: Provided, that were a disposition or rehabilitation proposal is involved, the decision of the Council must be unanimous. In case they are unable to attend, the Chairman and Members may designate any of their immediate subordinates with the rank of Undersecretary or its equivalent to represent them in the meetings of the Council. The Council shall act on any recommendation for disposition not later than thirty (30) days from the date of its submission to the Council.

Section 5. Legal Counsel. The Secretary of Justice shall be the ex-officio adviser to the Council on legal matters. Section 6. Funding. The Council shall be provided with an initial budget of Ten Million Pesos (P10, 000,000.00) to be drawn from the Organizational Adjustment Fund. Appropriations for the succeeding years shall be incorporated in the budget proposal for the Office of the President.

Article III. Privatization and Management Office

Section 1. Organization - There is hereby organized under the Department of Finance an Office called Privatization and Management Office (PMO), hereinafter referred to as the “Office”. The Office shall be headed by a Chief Privatization Officer (CPO) who shall be appointed by the President of the Philippines upon recommendation of the Secretary of Finance. The Chief Privatization Officer shall be assisted by four (4) Deputy Privatization Officers who shall be in charge of specific operations and undertakings as directed by the Chief Privatization Officer. These Deputy Privatization Officers shall be appointed by the Secretary of Finance upon recommendation by the Chief Privatization Officer.

Section 2. Powers and Functions. In addition to the powers, duties and functions under Proclamation No. 50, as amended, the Office shall be empowered to implement the actual marketing/disposition program of the government corporations, assets and idle properties after securing prior approval of the Council, to execute and deliver, on behalf of the National Government, the deeds of sale, contracts and other instruments as may be

necessary or appropriate to convey title to such assets, to take title to and possession and conserve assets transferred to it, to engage external expertise as necessary in the fulfillment of its tasks, to adopt internal rules and regulations and to submit periodic reports to the Council on the status of the disposition program.

Section 3. Powers and Functions of the CPO. The CPO shall have the following powers and functions.

1. To enter into management and other contracts as may be appropriate; and

2. To develop the staffing requirements of the Office, and for this purpose, appoint, remove and fix the remuneration of the personnel of the Office: Provided, That as far as practicable, the CPO should rely on secondment from government entities undertaking related functions, and or qualified external expertise in an advisory capacity and on a contractual basis.

Any and all sales and other modes of privatization or disposition shall not be considered final unless and until approved by the Council. All receipts from the sale of assets of the Office, except portions thereof for reimbursable custodianship and/or operational expenses, shall be remitted to the National Treasury.

Section 4. Qualifications. No personal shall be appointed an Officer unless he or she is of good moral character, of unquestionable integrity and responsibility, and of recognized business competence. No person, or director, officer, consultant or stockholder of corporations constituting or having any interest in the assets assigned to the Office may be appointed as an Officer.

Section 5. Internal Guidelines. The Office, through its Chief Privatization Officer, may adopt and implement such internal rules and regulations necessary or convenient for the proper discharge of the functions of the Office. Provided, That such internal rules and regulations must be in accordance with existing laws, orders, decrees and proclamations. Provided further, That such rules and regulations may be subsequently amended, abrogated or disapproved by the Secretary of Finance.

Section 6. Funding. The Office shall be provided with an initial budget of Thirty Million Pesos (P30, 000,000.00) to be drawn from the Organizational Adjustment Fund. The Office shall be allowed to retain commissions, due diligence fees and proceeds from the sale of Asset Bidding Rules, information memoranda and similar documents, as well as a portion or percentage of proceeds from disposition efforts, not to exceed ten percent (10%), to be approved by the Council to maintain a revolving fund to be utilized for the payment of fees and reimbursable expenses and of the costs and expenses incurred by the Office in the conservation and

disposition of the assets held by it or in the performance of its other responsibilities under this Executive Order. Appropriations for the succeeding year shall be incorporated in the budget proposal for the Department of Finance.

Article IV. Operational Provisions

Section 1. Transfer of Assets. Pursuant to the provisions of Republic Act No. 8758, the financial assets of APT shall be transferred for disposition by the President to a trust department of the Land Bank of the Philippines. The physical assets remaining at the end of the term of APT shall immediately be transferred to the Office under the Department of Finance for appropriate disposition.

Section 2. Utilization of Proceeds. Upon the effectivity of this Executive Order, all receipts from the sale of assets shall be remitted to the National Treasury in the following proportion: sixty percent (60%) to the special account of the Agrarian Reform Fund and forty percent (40%) to the general fund: Provided further, That except for the subsidiaries of the Government Service Insurance System and the Social Security System, all government owned and controlled corporations shall remit to the National Treasury at least fifty percent (50%) of the net proceeds derived from the sale of shares or assets effective October 1, 1992. Provided further that the net proceeds shall mean gross proceeds less related liabilities and selling expenses as stipulated in the provisions of Republic Act No. 7661.

Section 3. Sale of Small Local Investors. Pursuant to the provisions of Republic Act No. 7886, a minimum of 10% of the sale of assets in corporate form shall be reserved to small local investors to develop the domestic capital market. Any of the following transactions shall be deemed compliance on the sale to small local investors: (a) Initial Public Offering (IPO), (b) Employee Stock Option/Ownership Plans (ESOPs). Provided, that the Social Security System and Government Service Insurance System shall grant loans to qualified employees of the firms under privatization who would like to avail the ten percent (10%) stock offering as provided in this Executive Order, (c) sale to private and government employees, overseas workers, small farmers/fisherfolks and cooperatives through Government Financial Institutions such as GSIS, LBP, DBP and HDMF, (d) sales of assets/shares to individual investors not exceeding a maximum of P100,000.00, (e) sale of retirement funds, pension funds and other funds managed on behalf of employees and other individuals, (f) sale of privatization bonds issued by the Republic of the Philippines provided that the terms of such privatization bonds give the option to holders thereof to exercise the exchange option contained in such bonds either into shares in corporate assets privatized through the IPO or into a cash amount where the privatized corporate asset is being sold to one or more block investors.

Article V. Miscellaneous Provisions

Section 1. Separability Clause - Any portion or provision of this Executive Order that may be declared unconstitutional or invalid shall not have the effect of the nullifying the other provisions thereof: Provided, That the remaining portions can still stand and be given effect in their entirety to accomplish the objectives of this Order.

Section 2. Repealing Clause - All executive orders, rules and regulations and other issuances or parts thereof that are inconsistent with the provisions of this Executive Order are hereby repealed and modified accordingly.

Section 3. Effectivity - This Executive Order shall take effect upon publication but not earlier than January 1, 2001.

DONE in the City of Manila, this 6th day of December in the year of our Lord, two thousand one.

(Sgd.) JOSEPH EJERCITO ESTRADA

President

Republic of the Philippines

By the President:

(Sgd.) RONALDO B. ZAMORA

Executive Secretary

ANNEX D
BOA Rules of Practice

Rules of Practice and Procedure before the Board of Arbitration of the Al Amanah Islamic Investment Bank of the Philippines

Pursuant to the authority provided by section 9 and other sections of R.A. 6848, otherwise known as "the Charter of the Al Amanah Islamic Investment Bank of the Philippines" the Board of Directors adopted and promulgated on March 30, 1993 in its Board Resolution No. 92-C-30-56, Series of 1993 the following rules on the practice and procedure before the Board of Arbitration, herein referred to as the "BOA", of the AIIBP.

Rule 1

Section 1. Title.These rules shall be known as the Rules of Practice and Procedure before the Board of Arbitration of the Al Amanah Islamic Investment Bank of the Philippines.

Sec. 2. Applicability. – These rules shall apply to all matters brought before the Board of Arbitration, in the exercise of the powers and functions under R.A. 6848.

Sec. 3. Construction. These rules shall be liberally construed in order to promote public interest in the Islamic Investment Bank with the end in view that investment in this Bank may be encouraged and protected, and the Bank's activities pursued for the promotion of economic development in the Autonomous Region of Muslim Mindanao, and in order to promote further the stockholders interest in this Bank and to assist the stockholders in obtaining just, speedy and inexpensive determination of every action brought before the Board of Arbitration Formal requirements may not affect the intrinsic validity of the proceedings, provided that the

information and facts alleged therein are clearly indicated for the judicious disposition of the case.

Sec. 4. Nature of Proceedings. Subject to the requirements of due process, proceedings before the BOA shall be summary in nature not necessarily adhering to or following the technical rules of evidence obtaining in the courts of law. The Rules of Court may apply in said proceedings in suppletory character whenever practicable.

Sec. 5. Prohibited Pleadings and Motions.

The following pleadings, motions, petition shall not be allowed: a. Motion to Dismiss or Quash; b. Motion for a bill of particulars; c. Motion for reconsideration and/or reopening of hearing; d. Motion for Extension of time to file pleadings, affidavits or any other paper when intended to cause delay; e. Petition for certiorari, mandamus, or prohibition against any interlocutory order issued by the Hearing Officer; f. Dilatory Motions for postponement.

Sec. 6. Verification of Pleadings. All pleadings filed under these rules must be verified and sworn to before the Shari'a Advisory Council of the Al Amanah Islamic Investment Bank of the Philippines.

Rule 11- Authority of the Board of Arbitration

Sec. 1. Authority of the Board of Arbitration. Pursuant to Section 9 of R. A. 6848, the Board of Arbitration is primarily charged with the following: The duly elected Board of Directors of the IIBP, acting as an arbitrator, shall settle by the majority decision of its members any dispute between and among shareholders of the Islamic Bank, whether individuals or entities, where such dispute arises from their relations as shareholders in the Islamic Bank. The Board shall not be bound in this respect to the procedures of laws on civil and commercial pleadings, except in regard to the basic principles of due process.

If the dispute is between the Islamic Bank and any of the investors or the shareholders, a Board of Arbitration shall settle such dispute. In this case, the Board of Arbitration, consisting of three members, shall be formed by two (2) parties to the dispute within forty five (45) days from receipt of written notice by either party to the dispute. The three (3) members shall be selected as follows: -- one (1) arbitrator from each party who shall then select a casting arbitrator the third member of the Board. The three (3) shall select one of them to preside over the Board of Arbitration. The selection

by each party of its arbitrator shall be deemed as an acceptance of the arbitrator's decision and of its finality.

Sec. 2. Role of the Shari'a Advisory Council in Arbitration.

In the event that one of the two parties shall fail to select its arbitrator or in the case of non-agreement on the selection of the casting arbitrator or the presiding member of the Board of Arbitration within the period specified in the preceding paragraph, the matter shall be submitted to the Shari'a Advisory Council to select the arbitrator, the casting arbitrator, or the presiding member, as the case may be, as provided for under paragraph three of Section 9, R.A. 6848.

Sec. 3. Hearing, Decision, and Final Judgment.

The Board of Arbitration shall meet at the Islamic Bank's principal office and shall set up the procedure of arbitration, which it shall follow in hearing and deciding the dispute. The decision shall include the method of its execution and the party shall incur the costs of arbitration. The final judgment shall be deposited with the office of the Corporate Secretary of the Bank and the Securities and Exchange Commission.

Sec. 4. Execution of Final Judgment.

The Board of Arbitration's decision shall, in al cases, be final and executory. It shall be valid for execution in the same manner as final judgments are effected under Republic Act No. 876 otherwise known as the Arbitration Law.

Sec. 5. Complaints.

The Board of Arbitration shall receive complaints on violations of the Charter of the Al Amanah Islamic Investment Bank of the Philippines, R. A. 6848, and other incidental laws mentioned in R.A. 6848 which are relevant to stockholdings in the Islamic Bank, the By-Laws of the Bank, and the rules and regulations promulgated pursuant thereto including the terms and conditions or equity investment agreement entered into by and between the Islamic Bank and its shareholders. Sec. 6. Investigations. The BOA initiates and conducts investigations as well as gathers data from intelligence sources and from such persons involved in shareholders disputes. It renders reports and recommends appropriate actions and measures thereon; it files and prosecutes civil or criminal cases before the Securities and Exchange Commission and other courts of justice involving violations of R.A. 6848 when such cases cannot be resolved by BOA for lack of jurisdiction.

Rule III – Complaints and Respondents

Sec. 1. Complaint and Respondent (s).

In all cases filed with the Board of Arbitration, the party initiating the action shall be called the complainant and the party/entity against whom an action is made shall be called the respondent.

Rules IV – Commencement of Action

Sec. 1. Caption and Title.

In all complaints filed with the BOA, the full name of all parties, as far as they are known, shall be stated in the caption, motion, resolution, or order and in all summons, notices and processes to be served upon them. If the action is initiated by anyone other than the BOA, the caption shall be as follows:

AL AMANAH ISLAMIC INVESTMENT BANK OF THE PHILIPPINES BOARD OF ARBITRATION

_______________________ Complainant CASE NO. ___________ For: _____________ -versus- (state the nature of the action)

_______________________ Respondent/s

x-------------------x

Sec. 2. When Action is Deemed Commenced.

An action is deemed commenced upon the filing of a verified complaint/affidavit in accordance with these Rules of Procedure. Sec. 3. Forms and Contents The complaint shall be in writing, under oath and drawn in clear and concise language, specifying the names and addresses of complainant/s, respondent/s andwitnesses, if any. It shall state the ultimate facts constituting the cause of action or specific violation of law or rules and regulations as well as information pertinent thereto. It shall also specify the remedies/relief sought.

Rule V - Proceedings before the Board of Arbitration

Sec. 1. Hearing.

The Board of Arbitration shall have the following powers:

- **A. To hear and decide cases that falls within its jurisdiction consistent with these Rules of Procedure and exercise full and active control of the proceedings at any stage thereof:**
- **B. To issue subpoena and subpoena duces tecum or other legal processes;**
- **C. To hear and resolve all motions.**

Sec. 2. Preliminary Conference/Hearing.

The BOA or its duly authorized officer shall, not later than twenty (20) days after the answer is filed, conduct preliminary conference/hearing of the case during which the parties if they so desire, and their respective counsels shall be present for the purpose of considering the following: A. The simplification of the issues and stipulation of facts and admissions of documents; B. The number and names of witnesses and a brief statement of their testimony; and C. Such other matters as may aid in the prompt disposition of the case.

Sec. 3. Submission of Documents.

During the preliminary conference/hearing, or immediately thereafter, the BOA may require the parties to simultaneously submit their respective verified position papers accompanied by all supporting documents and the affidavits of their witnesses, if any which shall take the place of their direct testimony. The parties shall furnish each other with copies of the position papers together with the supporting affidavits and documents submitted by them.

Sec. 4. Disposition of Case.

If the BOA finds no necessity of further hearing after the parties have submitted their position papers and supporting documents, it shall so inform the parties stating the reasons therefore and shall ask them to acknowledge the fact that they were so informed by signing the minutes of the hearing and the case shall be deemed submitted for resolution.

Sec. 5. Postponement.

Motion for postponement shall be filed three (3) days prior to the scheduled hearing, copy furnished/served on the adverse party by the movant, if any, except motion for continuance made in the presence of the adverse party, or those made in the course of hearing. Postponement shall be granted only in clearly meritorious cases like illness of a party or counsel.

Sec. 6. Admission of Evidence. The BOA shall admit evidence relevant or material to the case. The testimonies of witnesses and manifestations of parties during the hearing shall be duly recorded. In case of doubt, he shall admit all the evidences presented, subject to the objections interposed, if there be any. All documents forming part of the records of the case and material to the issues of the case, whether marked as exhibits or not, shall be deemed admitted as evidence and may be considered in the resolution of the case.

Sec. 7. Marking of Exhibits. All exhibits shall be properly and consecutively marked by alphabetical letters if presented by the complainant and by Arabic numbers if presented by the respondents. All evidences introduced in the hearing shall be attached to the records of the case.

Sec. 8. Submission of Memoranda.

The hearing officer may allow the parties to submit their memoranda and/or position papers not later than ten (10) days from the submission of the case for resolution.

Rule VI – Orders and Resolution

Sec. 1. Order or Resolution.
Upon submission of the case for resolution, the BOA shall issue the corresponding order or resolution as the final consideration upon the matters submitted to it within thirty (30) days.

Sec. 2. Finality of the Order or Resolution.

Any order or resolution of the hearing officer, in the absence of appeal therefrom, shall become final and executory thirty (30) days from the date of receipt thereof. RULE VII DOCKET NUMBERS Sec. 1. Docket Numbers and Calendar of Case. All cases cognizable by the BOA shall be numbered and docketed consecutively and entered into an appropriate docket book. Corresponding code numbers and/or abbreviations may be used for ready reference.

Rule VIII - Withdrawal of complaint

Sec. 1. Effect of Withdrawal of Complaint.

The withdrawal of complaint shall not have the effect of automatically dismissing it or terminating the proceedings thereon. The BOA may muto

propio continue the same if it deems necessary in the interest of the Islamic Bank and the public.

Rule IX - Summons and Notices

Sec. 1. Summons and Notices of Hearing.

Upon docketing of the complaint, the BOA shall issue summons requiring respondent/s to file its Answer/Counter-Affidavit within fifteen (15) days from receipt thereof, and to appear for preliminary conference/hearing on the date specified thereof, copy furnished the complainant . Copy of the complaint shall be sent to the respondent together with the summons. Sec.

2. Contents of Summons.

The summons shall be addressed to the respondent/s and shall contain the following:

A. **The names and addresses of the parties to the action;**
B. **The date, nature and place of proceedings;**
C. **Directive that respondent/s answers the complaint within fifteen (15) days from receipt of summons together with a copy of the complaint.**

Sec. 3. Service of Summons, Writs, and Processes.

All summons, writs and processes shall be served either by registered mail or personally to the complainant and the respondent/s and any interested party prior to the proceedings. Personal services of summons shall be made by handing a copy thereof to the respondent in person or to his authorized representative or, if the latter refuses it, by tendering it in his presence, provided that where a party is represented by counsel or authorized representative, service shall be made on the latter. Sec. 4. Default. Should the respondent fail to answer the complaint within the reglementary period as provided for in the summons, he shall be declared in default and the BOA shall proceed with the hearing ex parte, and shall decide the case on the evidence presented. However, respondent who filed his answer but failed to appear in person or by counsel on the preliminary hearing shall be declared as in default and the proceedings shall proceed ex parte.

Rule X –
Effectivity

Sec. 1. Effectivity. These rules shall take effect fifteen (15) days after approval by the Board of Directors of the Al Amanah Islamic Investment Bank of the Philippines. Makati, Metro Manila, March 30, 1993

APPROVED BY: THE BOARD OF DIRECTORS BOARD RESOLUTION NO. 92C-30-56, SERIES OF 1993

(sgd) ABDEL AZIZ DIMAPUNONG Chairman and Chief Executive Officer

(sgd) ATTY. MACAPANTON ABBAS, JR. Member
(sgd) GRANDE M. DIANATON Member
(sgd) ALI MALAMBUT Member
(sgd) ATTY VICTOR SANTOS Member

(sgd) ABDUL MALIK RANGAIG Member

CERTIFIED BY:

(sgd) ATTY. KUNUNG U. PUMBAYA Secretary to the Board

ANNEX D

General References

1. The Holy Qur'an (Al Qur'an Al Karim)
2. The Charter of the Al Amanah Islamic Investment Bank Of the Philippines, RA 6848
3. The old Charter of the Philippine Amanah Bank, P.D. 264, As amended by P.D. 542.
4. The Investment House Law, P.D. 129
5. The old Central Bank Act, R.A. 267
6. The Law on Venture Capital Corporation, P.D. 1688
The new Central Bank Act, RA 7653
7. The old General Banking Act, RA 337
8. The new General Banking Act of 2000, RA 8791
9. The Law on Secrecy of Deposit, RA No. 1405, as Amended
10. The Securities and Exchange Commission, P. D. No. 902-A
11. The Revised Securities Act
12. The Securities Regulation Code, RA 8799
13. The Anti Money Laundering Act of 2001, As amended by RA 9194
An Act Providing For An Organic Act For The Autonomous Region Of Muslim Mindanao, RA 6734.
15. The Law On Alternative Dispute (ADR) Resolution, RA 9285
16. Executive Order 425, Placing Under the Control and Supervision of the Autonomous Regional Government of the ARMM the Lind Agencies and Offices of the National Government.
17. Supreme Court Case No. UDK 11290
18. Remarks before the Seminar on Legal Issues in the Islamic Financial Services Industry entitled: "Regulation of Islamic Financial Services in the United States" by: Thomas C. Baxter, Jr. EVP and General Counsel, Federal Reserve Bank of New York
19. J.R.S. Business Corp. et. al vs. Ofilada, et al. 120 Phils 618, 628.
20. Gulf Refining Co. vs. Cleveland Trust Co. 108 So. 158.
21. SEC ruling in Alfredo C. Gray, Sr. vs. Augustine Marketing et. al., (SEC Case No. 2102 dated March

ANNEX E
Court and DOJ References

CASE 1. **Al Amanah Islamic Investment Bank of the Philippines vs. Abdel Aziz Dimapunong**
Case No. IS No. 95-012 MKT, for usurpation of authority Or official function.
(Case DISMISSED, July 4, 1995)

Case 2. **Al Amanah Islamic Investment Bank of the Philippines vs. Abdel Aziz Dimapunong, et. al.**
Case No. IS No. 92-8557 (1992) for Usurpation of Authority or Official Functions in violation of Article 177 of the Revised Penal Code.
(Case DISMISSED, August 4, 1993)

Case 3. **Abdel Aziz Dimapunong, et al v. Hon Judge Zosimo Angles, et al. Case No. CA GR SP No. 28445,**
Petition for Review and Certiorari in the Hon. Court of Appeals
(Case DISMISSED, January 13, 1993)

Case 4. **Al Amanah Islamic Investment Bank of the Philippines vs. Abdel Aziz Dimapunong, et al. Civil Case No. 92-1487. Makati Regional Trial Court Branch 58, for injunction with damages.**